FEDERAL REGISTER

VOLUME 7 NUMBER 75

Washington, Friday, April 17, 1942

The President

EXECUTIVE ORDER 9133

TRANSFERRING CERTAIN MOTOR REPAIR SHOPS WITH THEIR PERSONNEL AND PROPERTY AND THE FUNCTIONS OF OPERATIONS AND MAINTENANCE THEREOF FROM THE CIVILIAN CONSERVATION CORPS TO THE WAR DEPARTMENT

By virtue of the authority vested in me by the Constitution and laws of the United States, and particularly by Title I of the First War Powers Act, 1941 (Public Law 354, 77th Congress), it is hereby ordered as follows:

1. All of the forty-five motor repair shops now maintained by the Civilian Conservation Corps at locations designated below, together with the functions of operation and maintenance thereof, and all supplies, parts, buildings, schools operated in connection therewith, and all facilities and all shop and administrative personnel thereof, are hereby transferred from the Civilian Conservation Corps to the War Department:

Division I—Nine shops located at Lawrence, Massachusetts; Oneida, New York; Williamsport, Pennsylvania; Sheffield, Pennsylvania; Beltsville, Maryland; Salem, Virginia; Elkins, West Virginia; Corbin, Kentucky; and New Brunswick, New Jersey.

Division II—Eleven shops located at Jackson, Tennessee; Gainesville, Georgia; Chattanooga, Tennessee; Asheville, North Carolina; Sumter, South Carolina; Talledega, Alabama; Forest, Mississippi; Lufkin, Texas; Pollack, Louisiana; Lake City, Florida; and Hot Springs, Arkansas.

Division III—Nine shops located at Watersmeet, Michigan; Gaylark, Michigan; Grand Rapids, Minnesota; La-Crosse, Wisconsin; Des Moines, Iowa; Rolla, Missouri; Springfield, Illinois; Martinsville, Indiana; and Circleville, Ohio.

Division IV—Eight shops located at Denver, Colorado; Grand Junction, Colorado; Phoenix, Arizona; Marysville, Kansas; El Paso, Texas; Waco, Texas; Oklahoma City, Oklahoma; and Greybull, Wyoming.

Division V—Eight shops located at Olympia, Washington; Salem, Oregon; Boise, Idaho; Salt Lake City, Utah; Medford, Oregon; Reno, Nevada; Cedar City, Utah; and Bend, Oregon.

2. The War Department is directed to make available (from the properties and buildings hereby transferred to that Department) to the Federal Security Agency, the Federal Works Agency, the Department of Agriculture, the Department of the Interior, or any other Government agency, working on projects which the War Department deems to be of military importance and urgency, such shops and equipment as will be needed by such agencies in carrying on such projects.

3. The War Department is directed to repair and maintain the Civilian Conservation Corps' vehicles and other heavy equipment, either in the custody of the above-named agencies or in the custody of the Corps, and the War Department may repair other equipment of these or other Federal agencies working on projects of military importance and urgency, subject, in both cases, to reimbursement for the cost of such service.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
April 14, 1942.

[F. R. Doc. 42-3362; Filed, April 15, 1942; 3:02 p. m.]

Rules, Regulations, Orders

TITLE 10—ARMY: WAR DEPARTMENT

Chapter VII—Personnel

PART 79—PRESCRIBED SERVICE UNIFORM[1]

§ 79.54 *Badges, aviation.*

* * * * *

(i) *Service pilot.* The shield of the United States at the center of the wings

[1] § 79.54 (i) is superseded.

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THE PRESIDENT

RULES, REGULATIONS, ORDERS

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FEDERAL REGISTER

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without the stars in the chief nor the stripes in the field, with the letter "S" superimposed on the shield. (R.S. 1296; 10 U.S.C. 1391) [Par. 54 *i*, AR 600-35, Nov. 10, 1941, as amended by Cir. 264, W.D., Dec. 19, 1941, and Cir. 106, W.D., April 10, 1942.]

[SEAL] J. A. ULIO,
Major General,
The Adjutant General.

[F. R. Doc. 42-3364; Filed, April 16, 1942; 10:09 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Administrator of Civil Aeronautics, Department of Commerce

[Amendment No. 3, Part 600]

PART 600—DESIGNATION OF CIVIL AIRWAYS [1]

REDESIGNATION OF GREEN CIVIL AIRWAY NO. 2 AND RED CIVIL AIRWAY NOS. 20 AND 31; DELETION OF RED CIVIL AIRWAY NO. 9

APRIL 15, 1942.

Acting pursuant to the authority vested in me by section 302 of the Civil Aeronautics Act of 1938, as amended, I hereby amend the Designation of Civil Airways which became effective March 1, 1942, as follows:

1. By striking the following words appearing in § 600.10001:

* * * "From the intersection of the center line of the on course signal of the west leg of the Buffalo, N. Y., radio range and the U. S.-Canadian Border, via the Buffalo, N. Y., radio range station," and inserting in lieu thereof the words: "From the intersection of the center line of the on course signal of the east leg of the Clear Creek, Ontario, Canada, radio range and the U. S.-Canadian Border, via the intersection of the center lines of the on course signals of the east leg of the Clear Creek, Ontario, Canada, radio range and the southwest leg of the Buffalo, N. Y., radio range; Buffalo, N. Y., radio range station" * * *

2. By amending § 600.10208 to read as follows:

§ 600.10208 (Unassigned.)

3. By striking the following words appearing in § 600.10219:

* * * "the intersection of the center lines of the on course signals of the southwest leg of the Saginaw, Mich., radio range and the northwest leg of the Detroit, Mich., (Wayne County Airport) radio range; to the intersection of the center lines of the on course signals of the southeast leg of the Lansing, Mich., radio range and the northwest leg of the Detroit, Mich., (Wayne County Airport) radio range.", and inserting in lieu thereof the words: "the intersection of the center lines of the on course signals of the southwest leg of the Saginaw, Mich., radio range and the northwest leg of the Windsor, Ontario, Canada, radio range, to the intersection of the center line of the on course signal of the northwest leg of the Windsor, Ontario, Canada, radio range and the U. S.—Canadian Border." * * *

4. By striking the following words appearing in § 600.10230:

* * * "Municipal Airport, Pierre, S. Dak.", and inserting in lieu thereof the words: "Pierre, S. Dak., radio range station; the intersection of the center lines of the on course signals of the east leg of the Pierre, S. Dak., radio range and the southwest leg of the Huron, S. Dak., radio range"

This amendment shall become effective 0001 E. S. T., April 15, 1942.

C. I. STANTON,
Acting Administrator.

[F. R. Doc. 42-3374; Filed, April 16, 1942; 10:22 a. m.]

[Amendment No. 7, Part 601]

PART 601—DESIGNATION OF AIRWAY TRAFFIC CONTROL AREAS, CONTROL ZONES OF INTERSECTION, CONTROL AIRPORTS AND RADIO FIXES [1]

REDESIGNATION OF AIRWAY TRAFFIC CONTROL AREAS AND DELETION OF CERTAIN CONTROL ZONES OF INTERSECTION

APRIL 14, 1942.

Acting pursuant to the authority vested in me by section 308 of the Civil

[1] 7 F.R. 1417, 1748, 2381.

[1] 7 F.R. 378, 528, 597, 841, 1016, 1424, 1748, and *infra*.

Aeronautics Act of 1938, as amended, and §§ 60.22 and 60.23 of the Civil Air Regulations, and finding that this action is necessary in the interest of safety and for the proper control of air traffic, I hereby amend Part 601 of the Regulations of the Administrator of Civil Aeronautics which became effective January 15, 1942, as follows:

1. By amending § 601.1004 to read as follows:

§ 601.1004 *Green civil airway No. 4 airway traffic control areas (Los Angeles, Calif., to Philadelphia, Pa.).* All of green civil airway No. 4.

2. By striking the words "south of the Phoenix, Ariz." appearing in § 601.1005 and inserting in lieu thereof the following: "east of the El Paso, Tex.".

3. By amending § 601.1013 to read as follows:

§ 601.1013 *Amber civil airway No. 3 airway traffic control areas (El Paso, Tex., to Great Falls, Mont.).* All of amber civil airway No. 3."

4. By amending § 601.10210 to read as follows:

§ 601.10210 *Red civil airway No. 10 airway traffic control areas (Amarillo, Tex., to Charleston, S. C.)* All of red civil airway No. 10).

5. By amending § 601.10224 to read as follows:

§ 601.10224 *Red civil airway No. 24 airway traffic control areas (Amarillo, Tex., to Oklahoma City, Okla.)* All of red civil airway No. 24.

6. By striking the following control zones of intersection appearing in § 601.2: Amarillo, Tex.; El Paso, Tex.

This amendment shall become effective 0001 M. S. T., April 15, 1942.

C. I. STANTON,
Acting Administrator.

[F. R. Doc. 42-3373; Filed, April 16, 1942; 10:26 a. m.]

[Amendment No. 8, Part 601]

PART 601—DESIGNATION OF AIRWAY TRAFFIC CONTROL AREAS, CONTROL ZONES OF INTERSECTION, CONTROL AIRPORTS AND RADIO FIXES [1]

REDESIGNATION OF CERTAIN AIRWAY TRAFFIC CONTROL AREAS AND RADIO FIXES; DESIGNATION OF CERTAIN CONTROL AIRPORTS

APRIL 15, 1942.

Acting pursuant to the authority vested in me by section 308 of the Civil Aeronautics Act of 1938, as amended and §§ 60.112, 60.21, and 60.23 of the Civil Air Regulations, and finding that this action is necessary in the interest of safety and for the proper control of air traffic, I hereby amend Part 601 of the Regulations of the Administrator of Civil Aeronautics which became effective January 15, 1942, as follows:

[1] 7 F.R. 378, 528, 597, 841, 1016, 1424, 1748, and *supra*.

1. By amending § 601.10209 to read as follows:

§ 601.10209 (Unassigned.)

2. By amending § 601.3 so as to include in the proper alphabetical order the designation of the following airports as control airports:

City	*Name of airport*
Augusta, Maine	Augusta Airport.
Burlington, Vt.	Burlington Airport.
Concord, N. H.	Concord Airport.
Great Falls, Mont.	Great Falls Airport.
Millinocket, Maine.	Millinocket Airport.
Portland, Maine	Portland Airport.
Syracuse, N. Y.	Syracuse Airport.
Walla Walla, Wash.	Walla Walla Airport.
Westfield, Mass.	Barnes Airport.
Yakima, Wash.	Yakima County Airport.

3. By amending § 601.40209 to read as follows:

§ 601.40209 (Unassigned.)

4. By inserting after the words "Rapid City, S. Dak., radio range station;" appearing in § 601.40231 the words: "Pierre, S. Dak., radio range station;".

This amendment shall become effective 0001 E. S. T., April 15, 1942.

C. I. STANTON,
Acting Administrator.

[F. R. Doc. 42-3375; Filed, April 16, 1942; 10:22 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 240—RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

AMENDMENT TO RULE RELATING TO EXEMPTION OF THE SOLICITATION OF PURCHASES ON AN EXCHANGE

The Securities and Exchange Commission, deeming it necessary for the exercise of the functions vested in it and necessary and appropriate in the public interest and for the protection of investors so to do, pursuant to authority conferred upon it by the Securities Exchange Act of 1934, particularly sections 10 (b) and 23 (a) thereof, hereby amends § 240.10b-2 [Rule X-10B-2 (d)] to read as follows:

§ 240.10b-2 *Solicitation of purchases on an exchange to facilitate a distribution of securities.*

* * * * *

(d) (1) The provisions of this rule shall not apply to any transaction involving the payment of a special commission to a person acting as a broker for a purchaser by a person selling any security described in this paragraph, where such payment is made pursuant to the terms of an effective plan authorizing the payment of special commissions in connection with a distribution of securities, which plan has been filed with the Commission by a national securities exchange: *Provided*, That such person, at the time he pays, or offers or agrees to pay, any such commission does not know or have reasonable grounds to believe that transactions connected with such distribution are being carried out in violation of such plan. This exemption shall be available only in respect of securities listed and registered on a national securities exchange, or of securities admitted to unlisted trading privileges on any such exchange where the issuer (i) has any security listed and registered on any such exchange and has filed the annual and other periodic reports required pursuant to the Securities Exchange Act of 1934 (48 Stat. 88, et seq.; 15 U.S.C. 78a–hh), or (ii) has any security registered under the Securities Act of 1933 (48 Stat. 74, et seq., 15 U.S.C. 77a–aa) and has filed the annual and other periodic reports required pursuant to section 15 (d) of the Securities Exchange Act of 1934 (49 Stat. 1377; 15 U.S.C. 78o), or (iii) is a holding company registered under the Public Utility Holding Company Act of 1935 (49 Stat. 803, et seq., 15 U.S.C. 79a–Z–5) and has filed the annual and other periodic reports required pursuant to such Act, or a subsidiary of any such company, or (iv) is registered under the Investment Company Act of 1940 (54 Stat. 789, et seq., 15 U.S.C. 80a–1–53) and has filed the annual and other periodic reports required pursuant to such Act.

(2) For the purposes of this rule a plan filed with the Commission by a national securities exchange shall not become effective unless the Commission, having due regard for the public interest and for the protection of investors, declares the plan to be effective. The Commission in its declaration may impose such terms and conditions relating to the provisions of the plan and the period of its effectiveness as it deems necessary or appropriate in the public interest or for the protection of investors.

(3) The provisions of this exemption shall terminate at the close of business on July 31, 1942, unless the Commission otherwise determines.

Effective April 16, 1942.
By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 42-3371; Filed, April 16, 1942; 10:14 a. m.]

TITLE 24—HOUSING CREDIT

Chapter I—Federal Home Loan Bank Administration

[Bulletin No. 6]

PART 8—MISCELLANEOUS

BANK PRESIDENTS' CONFERENCE, TIME AND PLACE OF MEETINGS

APRIL 15, 1942.

The third sentence of § 8.2 of the Rules and Regulations for the Federal Home Loan Bank System is hereby amended effective April 16, 1942 to read as follows:

§ 8.2 *Bank Presidents' Conference.* * * * The Bank Presidents' Confer-

ence shall meet at such place as may be determined by the Governor on the second Monday of each April and October or at such other time or times as determined by the Governor. * * * (Sec. 17 of F.H.L.B.A., 47 Stat. 736; 13 U.S.C. 1437; sec. 8 of F.H.L.B.A., 47 Stat. 731; 12 U.S.C. 1428; E.O. 9070, 7 F.R. 1529.)

This amendment is deemed to be of a minor and procedural character within the provisions of paragraph (b) of § 8.3 of the Rules and Regulations for the Federal Home Loan Bank System.

JAMES TWOHY,
Governor.
HAROLD LEE,
General Counsel.
ORMOND E. LOOMIS,
Executive Assistant to the Commissioner.

[F. R. Doc. 42-3368; Filed, April 16, 1942; 10:19 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VI—Selective Service System

[No. 62]

ORDER PRESCRIBING FORMS

NOTICE TO REGISTRANT OF RETURN OF SELECTIVE SERVICE OCCUPATIONAL QUESTIONNAIRE FOR COMPLETION

By virtue of the Selective Training and Service Act of 1940 (54 Stat. 885) and the authority vested in me by the rules and regulations prescribed by the President thereunder and more particularly the provisions of section 605.51 of the Selective Service Regulations, I hereby prescribe the following change in DSS forms:

Addition of a new form designated as DSS Form 313, entitled "Notice to Registrant of Return of Selective Service Occupational Questionnaire for Completion."[1] effective immediately upon the filing hereof with the Division of the Federal Register.

The foregoing addition shall, effective immediately upon the filing hereof with the Division of the Federal Register, become a part of the Selective Service Regulations.

LEWIS B. HERSHEY,
Director.

MARCH 30, 1942.

[F. R. Doc. 42-3372; Filed, April 16, 1942; 10:17 a. m.]

Chapter IX—War Production Board

Subchapter B—Division of Industry Operations

PART 958—REPAIRS, MAINTENANCE, AND OPERATING SUPPLIES

INTERPRETATION NO. 3 OF PREFERENCE RATING ORDER NO. P-100, AS AMENDED

The following official interpretation is hereby issued by the Director of Industry Operations with respect to § 958.2 (*Preference Rating Order P-100*, as amended from time to time):[2]

"Operating supplies", as defined in paragraph (b) (5) of Preference Rating Order P-100, do not include:

(1) Uniforms to outfit employees of producers as defined in the Order, or material to be used for such uniforms;

(2) Fire hose. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561, E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Law 89, 77th Cong.)

Issued this 16th day of April 1942.

J. S. KNOWLSON,
Director of Industry Operations.

[F. R. Doc. 42-3393; Filed, April 16, 1942; 11:38 a. m.]

PART 1033—NATURAL RESINS

CONSERVATION ORDER NO. M-56

The fulfillment of requirements for the defense of the United States has created a shortage in the supply of Natural Resins for defense, for private account and for export; and the following Order is deemed necessary and appropriate in the public interest and to promote the national defense:

§ 1033.1 *Conservation Order M-56.* (a) *Prohibition of use of natural resins in certain products.* Except as specifically authorized by the Director of Industry Operations, no person may hereafter use natural resins (including Congo copal in the case of road marking paints) in the manufacture of the following products:

Barn paints.
Farm equipment finishes.
Floor finishes.
Freight car paints.
Interior house paints.
Pencil finishes.
Playing card finishes.
Porch and deck paints.
Road marking paints.
Spirit label varnishes.
Toys and novelties finishes.

(b) *Restrictions on use of natural resins in all other products.* During each calendar quarter, commencing with the calendar quarter beginning April 1, 1942, the use or consumption of natural resins by any person shall, except as provided by paragraph (c) of this section, be curtailed and restricted as follows:

(1) In the manufacture of rotogravure inks for publication printing to seventy-five percent (75%) of the amount of natural resins used by such person in such manufacture during the corresponding quarter of 1941;

(2) In the manufacture or processing of any product other than products specified in paragraphs (a) and (b) (1) of this section, to fifty percent (50%) of the amount of natural resins used or consumed by such person in such manufacture or processing during the corresponding quarter of 1941.

(c) *Exception to use restrictions.* The prohibitions and restrictions of paragraph (b) of this section with respect to the use of natural resins shall not curtail or restrict in any way the use or consumption of such natural resins in the manufacture or processing of any product, where such product is manufactured or processed for use:

(1) Pursuant to a specific contract or sub-contract for the Army or Navy of the United States, the United States Maritime Commission, the Panama Canal, the Coast and Geodetic Survey, the Coast Guard, the Civil Aeronautics Authority, the National Advisory Committee for Aeronautics, the Office of Scientific Research and Development, or for any foreign country pursuant to the Act of March 11, 1941, entitled "An Act to Promote the Defense of the United States" (Lend-Lease Act) to the extent that such use is required by the specifications of the prime contract, or

(2) In chemical plants to the extent that corrosive action makes the use of any other material impractical, or

(3) In research laboratories where and to the extent that the physical and chemical properties make the use of any other material impractical, or

(4) As part of the maintenance and electrical equipment of vessels other than pleasure craft where corrosive action makes the use of any other material impractical, or

(5) In health supplies as defined in General Preference Order No. P-29, as now or hereafter amended.

(d) *Limitation on inventories.* No manufacturer shall accept delivery of natural resins or products thereof, whether in the form of raw material or of semi-processed material, if the amount accepted taken together with the quantity then on hand, shall exceed a sixty day supply, having regard to the orders placed with such manufacturer and his current method and rate of operation: *Provided, however,* (1) That any manufacturer who requires for specific uses within the scope and purpose of this Order natural resins of a class differing from those held in his inventory shall be entitled, notwithstanding the restrictions of this paragraph (d), to accept delivery of the minimum commercial purchase of such natural resins required to enable him to meet such requirements, and

(2) That the restrictions of this paragraph (d) shall not prevent the acceptance of deliveries by an established importer of natural resins, whether such deliveries represent direct imports or purchases from any other source.

(e) *Prohibitions against sales or deliveries of natural resins.* No person shall hereafter sell or deliver natural resins to any person if he knows, or has reason to believe such material is to be used or accumulated in violation of the terms of this Order.

(f) *Reports.* Any person affected by this Order shall within fifteen days after the end of the period March 1 to June 30, 1942, and within a like time after the end of each calendar quarter thereafter,

[1] Filed with the original document.

[2] 6 F.R. 6548; 7 F.R. 925, 1009, 1626, 1794, 2236.

until further action by the Director of Industry Operations, file a report on Form PD–339 showing Inventory at beginning and end of period, quantity received and consumption of natural resins in their general classifications.

(g) *Miscellaneous provisions*—(1) *Applicability of Priorities Regulation No. 1.* This Order and all transactions affected thereby are subject to the provisions of Priorities Regulation No. 1 (Part 944), as amended from time to time, except to the extent that any provisions hereof may be inconsistent therewith, in which case the provisions of this Order shall govern.

(2) *Applicability of Order.* The prohibitions and restrictions contained in this Order shall apply to the use of material in all articles hereafter manufactured irrespective of whether such articles are manufactured pursuant to a contract made prior or subsequent to the effective date hereof, or pursuant to a contract supported by a preference rating. In so far as any other Order of the Director of Industry Operations may have the effect of limiting or curtailing to a greater extent than herein provided, the use of natural resins in the production of any article, the limitation of such other Order shall be observed.

(3) *Appeal.* Any person affected by this Order who considers that compliance therewith would work an exceptional and unreasonable hardship upon him, or that it would result in a degree of unemployment which would be unreasonably disproportionate compared with the amount of natural resins conserved, or that compliance with this Order would disrupt or impair a program of conversion from non-defense to defense work, may appeal to the Director of Industry Operations by addressing a letter to the War Production Board, Chemicals Branch, Washington, D. C., Ref: M–56, setting forth the pertinent facts and the reasons he considers he is entitled to relief. The Director of Industry Operations may thereupon take such action as he deems appropriate.

(4) *Violations.* Any person who wilfully violates any provision of this Order, or who by any act or omission falsifies records to be kept or information to be furnished pursuant to this Order, may be prohibited from receiving further deliveries of any material subject to allocation, and such further action may be taken as is deemed appropriate, including a recommendation for prosecution under section 35A of the Criminal Code (18 U.S.C. 80).

(5) *Communications to War Production Board.* All reports required to be filed hereunder, and all communications concerning this Order, shall, unless otherwise directed, be addressed to War Production Board, Washington, D. C. Ref: M–56.

(6) *Definitions.* For the purpose of this Order:

(i) "Natural resins" means all natural resins, except Congo copal and pine rosin and products made therefrom, in their natural state, run, esterfied, fused, or otherwise processed, but shall not include prepared protective or technical coatings in a state ready for application on the effective date of this Order.

(ii) "Inventory" of a person shall include the inventory of affiliates and subsidiaries of such person, and the inventory of others where such inventory is under the control of or under common control with or available for the use of such person, and shall include natural resins purchased by him for future delivery.

(7) *Effective date.* This Order shall take effect immediately and shall continue in effect until revoked by the Director of Industry Operations. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561, E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; sec 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Law 89, 77th Cong.)

Issued this 16th day of April, 1942.

J. S. KNOWLSON,
Director of Industry Operations.

[F. R. Doc. 42–3396; Filed, April 16, 1942; 11.39 a. m.]

PART 1051—JUTE AND JUTE PRODUCTS

AMENDMENT NO. 1 TO GENERAL CONSERVATION ORDER M–70 [1]

Section 1051.1 (*General Conservation Order M–70*) is hereby amended in the following respects:

(1) Paragraph (b) is amended by adding thereto a new subparagraph (10) reading as follows:

(10) "Import" means to transport in any manner into the continental United States from any foreign country, and for purposes of this Order jute shall be deemed imported into the United States from the time it is released from the bonded custody of the United States Bureau of Customs.

(2) Subparagraph (1) of paragraph (c) is amended to read as follows:

(1) Unless specifically authorized by the Director of Industry Operations, no person shall, after the effective date of this amendment, sell or use any raw jute hereafter imported into the United States except to fill defense orders.

(3) Paragraph (n) is amended to read as follows:

(n) *Effective date.* This Order shall take effect immediately, and shall continue in effect until April 30, 1942, subject to such amendments or supplements thereof as may be issued from time to time: *Provided, however,* That the provisions of subparagraphs (c) (2) and (c) (3) shall take effect with the loading for a port in the continental United States, of the first cargo of raw jute in a vessel departing from any point of shipment in India on or after April 1, 1942, and the provision of paragraphs (f) (2), (g) (1) and (h) (2) shall take effect on March 1, 1942. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561, E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Law 89, 77th Cong.)

This amendment shall take effect immediately.

Issued this 16th day of April 1942.

J. S. KNOWLSON,
Director of Industry Operations.

[F. R. Doc. 42–3394; Filed, April 16; 1942; 11:39 a. m.]

[1] 7 F.R. 1594.

PART 1154—PLUMBING AND HEATING EQUIPMENT

LIMITATION ORDER NO. L–79

The fulfillment of requirements for the defense of the United States has created a shortage in the supply of metals for defense, for private account and for export; and the following Order is deemed necessary and appropriate in the public interest and to promote the national defense:

§ 1154.1 *General Limitation Order L–79*—(a) *Definitions.* For the purposes of this Order:

(1) "Plumbing equipment" means any equipment, fixture, fitting, pipe, or accessory of a type used in, or connected to, a water, sewer or gas system: *Provided,* That "plumbing equipment" does not include any tool for use in installation or repair, or any hose, sprinkler or other device of a type commonly attached to an outdoor faucet.

(2) "Heating equipment" means any primary heating unit of a type used to provide building warmth and any accessory or appurtenance of a type used in connection with such a primary heating unit.

(3) "New plumbing or heating equipment" means any plumbing equipment or heating equipment which has never been used by an ultimate consumer.

(b) *General restrictions.* From and after the effective date of this Order no person shall sell or deliver any new plumbing or heating equipment to any other person except that:

(1) any retail dealer of plumbing equipment or heating equipment may sell and deliver any item of new plumbing equipment or heating equipment which item is sold by him for no more than five dollars ($5.00),

(2) any person may sell and deliver any new plumbing equipment or heating equipment pursuant to an order or contract which bears a preference rating of A–10, or better,

(3) any retail dealer of plumbing equipment or heating equipment may sell and deliver any new plumbing equipment or heating equipment to any other retail dealer of plumbing equipment or heating equipment and to any distributor, jobber, wholesaler, or manufacturer of plumbing equipment or heating equipment,

(4) any distributor, jobber, or wholesaler of plumbing equipment or heating equipment may sell and deliver any new plumbing equipment or heating equip-

ment to any other distributor, jobber, or wholesaler of plumbing equipment or heating equipment and to any manufacturer of plumbing equipment or heating equipment,

(5) any new plumbing equipment or heating equipment actually in transit on the date of the issuance of this Order may be delivered to its immediate destination, and

(6) any person may sell and deliver to any other person any new plumbing equipment or heating equipment concerning which that person makes the following signed statement to him, listing all new plumbing equipment or heating equipment sold or delivered:

The following equipment _____ is necessary for the installation of one or more of the following items of farm machinery and equipment: milking machines, water cooled engines, cream separators, milk coolers, butter making equipment, water pumps, livestock individual drinking cups, livestock watering bowls, hog troughs, stock tanks, stock tank heaters, incubators, brooders, poultry waterers and beekeepers' supplies. Date _____ Signed _____ This statement shall constitute a representation to the War Production Board and to the person supplying such equipment that the listed equipment will be used for the purpose stated.

(c) *Records.* All persons affected by this Order shall keep and preserve for not less than two years accurate and complete records concerning inventories and sales. Similarly there shall be kept and preserved the signed statements referred to in paragraph (b) (6) above.

(d) *Audit and inspection.* All records required to be kept by this Order shall, upon request, be submitted to audit and inspection by duly authorized representatives of the War Production Board.

(e) *Reports.* Each Person to whom this Order applies shall execute and file with the War Production Board such reports and questionnaires as said Board shall from time to time require.

(f) *Violations or false statements.* Any person who wilfully violates any provision of this Order or who wilfully furnishes false information to the Director of Industry Operations in connection with this Order is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries or from processing or using material under priority control and may be deprived of priorities assistance by the Director of Industry Operations.

(g) *Appeals.* Any person affected by this Order who considers that compliance therewith would work an exceptional and unreasonable hardship upon him, or that it would result in a serious problem of unemployment in the community, or that compliance with this Order would disrupt or impair a program of conversion from nondefense to defense work, may apply for relief by addressing a letter to the War Production Board setting forth the pertinent facts and the reasons why such person considers that he is entitled to relief. The Director of Industry Operations may thereupon take such action as he deems appropriate.

(h) *Applicability of Priorities Regulation No. 1.* This Order and all transactions affected thereby are subject to the provisions of Priorities Regulation No. 1, as amended from time to time, except to the extent that any provision hereof may be inconsistent therewith, in which case the provisions of this Order shall govern.

(i) *Routing of correspondence.* All reports to be filed, appeals and other communications, concerning this Order shall be addressed to: War Production Board, Washington, D. C. Ref.: L–79.

(j) *Effective date.* This Order shall take effect on the date of its issuance and shall continue in effect until revoked by the Director of Industry Operations subject to such amendments or supplements thereto as may be issued from time to time by the Director of Industry Operations. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561, E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Law 89, 77th Cong.

Issued this 16th day of April 1942.

J. S. KNOWLSON,
Director of Industry Operations.

[F. R. Doc. 42–3397; Filed, April 16, 1942; 11:40 a. m.]

PART 1179—GOLF CLUBS

AMENDMENT NO. 1 TO LIMITATION ORDER L–93 [1]

Section 1179.1 (*General Limitation Order L–93*) is hereby amended in the following particular:

Subparagraph (b) (3) is hereby amended by changing the period at the end of the subparagraph to a comma and adding thereto the following: "except that finished parts containing iron and steel may be procured or acquired from inventories of other manufacturers." (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561, E.O. 9024, 7 F.R 329; E.O. 9040, 7 F.R. 527; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Law 89, 77th Cong.)

This amendment shall take effect immediately.

Issued this 16th day of April, 1942.

J. S. KNOWLSON,
Director of Industry Operations.

[F. R. Doc. 42–3395; Filed, April 16, 1942; 11:39 a. m.]

Chapter XI—Office of Price Administration

PART 1340—FUEL

AMENDMENT NO. 3 TO MAXIMUM PRICE REGULATION NO. 112 [2]—PENNSYLVANIA ANTHRACITE

A statement of the considerations involved in the issuance of this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.

A new paragraph (c) is added to § 1340.199a and § 1340.200 (b) is deleted.

§ 1340.199a *Effective dates of amendments.*

* * * * *

(c) Amendment No. 3 (§ 1340.199a (c) revocation of § 1340.200 (b)) to Maximum Price Regulation No. 112 shall become effective April 16, 1942. Until such date Maximum Price Regulation No. 112 continues in effect as if not amended by Amendment No. 3.

(Pub. Law 421, 77th Cong.)

Issued this 15th day of April 1942.

LEON HENDERSON,
Administrator.

[F. R. Doc. 42–3327; Filed, April 15, 1942; 4:56 p. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Navy

PART 5—REGULATIONS, UNITED STATES COAST GUARD AUXILIARY

ELIGIBILITY FOR MEMBERSHIP

Pursuant to the authority contained in Title I of the Coast Guard Auxiliary and Reserve Act of 1941 (Public No. 8, 77th Congress, 1st Session), the Regulations for the United States Coast Guard Auxiliary, approved March 5, 1941 (6 F.R. 1356), as amended, are hereby further amended as follows:

Section 5.3 (a) is amended to read as follows:

§ 5.3 *Personnel*—(a) *Eligibility.* Any citizen, over 18 years of age, who is the owner (sole or part) of any yacht or motorboat shall be eligible for membership in the Auxiliary, subject to the regulations as hereinafter set forth.

Section 5.4 (d) is amended by deleting the last two sentences of the last paragraph thereof.

R. R. WAESCHE,
Commandant.

Approved: April 15, 1942.

FRANK KNOX,
Secretary of the Navy.

[F. R. Doc. 42–3367; Filed, April 16, 1942; 9:36 a. m.]

TITLE 46—SHIPPING

Chapter II—Coast Guard: Inspection and Navigation

WAIVERS OF NAVIGATION LAWS CONFIRMED

All orders now in effect waiving compliance with the navigation laws, whether issued by the Secretary of Commerce under authority of Executive Order No. 8976, dated December 12, 1941 (6 F.R. 6441), in respect of functions of the Secretary of Commerce and the Bureau of Marine Inspection and Navigation and the office of the director thereof transferred to the United States Coast Guard by Executive Order No. 9083,

[1] 7 F.R. 2735.
[2] 7 F.R. 2512, 2739.

dated February 28, 1942 (7 F.R. 1609), or issued by the Secretary of the Navy under authority of Executive Order No. 8976 as modified by Executive Order No. 9083, are hereby confirmed and continued pursuant to the authority vested in me by the provisions of Section 501 of the Second War Powers Act, 1942 (Public Law 507, 77th Congress, 2d Session).

FRANK KNOX,
Secretary of the Navy.

APRIL 15, 1942.

[F. R. Doc. 42-3366; Filed, April 16, 1942; 9:36 a. m.]

AN ORDER WAIVING COMPLIANCE WITH THE PROVISIONS OF THE NAVIGATION AND INSPECTION LAWS TO THE EXTENT NECESSARY TO PERMIT CARGO VESSELS EQUIPPED WITH CERTIFICATES ISSUED BY THE BRITISH MINISTRY OF WAR TRANSPORT TO LOAD PASSENGERS, IN ACCORDANCE WITH THE CERTIFICATES, AT UNITED STATES PORTS FOR OUTWARD TRANSPORTATION

Upon the written recommendation of the Administrator of the War Shipping Administration, and by virtue of the authority vested in me by Section 501 of the Second War Powers Act, 1942 (Public Law 507, 77th Congress, 2d Session), I hereby waive compliance with navigation and inspection laws of the United States to the extent necessary to permit cargo vessels equipped with certificates issued by the British Ministry of War Transport under the provisions of Regulation 47BB of the Defense (General) Regulations, 1939, to load passengers, in accordance with the certificates, at United States ports for outward transportation to the United Kingdom or elsewhere, upon the condition that such vessels, upon departure from ports of the United States, shall have on board as passengers only British subjects; or citizens of the other United Nations who are engaged on official business or business directly connected with the prosecution of the war.

I find that the above Order, waiving the provisions of certain of the navigation inspection laws of the United States, is necessary in the conduct of the war.

FRANK KNOX,
Secretary of the Navy.

APRIL 15, 1942.

[F. R. Doc. 42-3365; Filed, April 16, 1942; 9:36 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 31—UNIFORM SYSTEM OF ACCOUNTS CLASS A AND CLASS B TELEPHONE COMPANIES

The Commission on April 14, 1942, effective immediately amended § 31.2-26 to read as follows:

§ 31.2-26. *Telephone plant continuing property record required.* (a) * * * The record shall be completed not later than June 30, 1943 with respect to telephone plant as at December 31, 1936 and with respect to the changes effected therein between the dates of June 1, 1937, and December 31, 1942, both inclusive. (Sec. 4 (i), 48 Stat. 1068; 47 U.S.C. 154 (i))

* * * * *

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 42-3377; Filed, April 16, 1942; 10:45 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

[Ex Parte No. MC-13]

Subchapter B—Carriers by Motor Vehicle

PART 197—TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

ORDER IN THE MATTER OF REGULATIONS GOVERNING THE TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES BY MOTOR VEHICLES

Motor Carrier Safety Regulations, Revised[1]

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 7th day of April A. D. 1942.

It appearing, By the prior reports and orders in these proceedings, 22 M.C.C. 477, 23 M.C.C. 649, 24 M.C.C. 439, and as further amended by Orders of March 31, 1941, and August 13, 1941, the Commission promulgated and prescribed certain regulations which are now in effect governing the transportation of explosives and other dangerous articles by common carriers by motor vehicle and contract carriers by motor vehicle;

It further appearing, That upon application made by interested parties the Commission investigated certain proposed new and amended regulations and, good cause appearing therefrom, by an order of September 20, 1941, subsequently superseded by an order of November 8, 1941, ordered that such new and amended regulations attached to and made a part of said orders (Parts 71-85 of Title 49 Code of Federal Regulation) be adopted, to be effective on and after February 1, 1942, superseding, as of that date, all provisions of Part 7, Transportation of Explosives and Other Dangerous Articles, of Motor Carrier Safety Regulations, Revised (Part 197 of Title 49 Code of Federal Regulation), other than the provisions therein governing safety of operation and equipment of motor vehicles, which were continued in effect until further order;

It is ordered, That the said rules and regulations governing safety of operation and equipment of motor vehicles, which were continued in effect by the said orders of September 20, 1941, and November 8, 1941, referred to in the paragraph next above, be and they hereby are vacated, effective May 15, 1942;

It is further ordered, That, pursuant to the authority of the Transportation of Explosives Act (sec. 233, 41 Stat. 1445; 18 U.S.C., Sec. 383), so far as common carriers by motor vehicle are concerned and pursuant to the authority of Sec. 204 (a) (2) of Part II of the Interstate Commerce Act, so far as contract carriers by motor vehicle are concerned, the following rules entitled "Motor Carrier Safety Regulations, Revised—Part 7, Transportation of Explosives and Other Dangerous Articles" (Part 197 of Title 49, CFR), which, with minor changes, are the provisions continued in effect referred to in the second paragraph of this order, be, and they hereby are approved, adopted, and prescribed for application on and after the effective date of this order;

AUTHORITY: §§ 197.01 to 197.209, inclusive, issued under sec. 233, 41 Stat. 1445, sec. 204 (a) (2), 49 Stat. 546; 18 U.S.C. 383, 49 U.S.C., 304 (a) (2).

§ 197.01 *Application of rules.* (a) These rules and regulations shall apply, without exception or exemption, to common carriers by motor vehicle and contract carriers by motor vehicle to the extent that the motor vehicles of said motor carriers are engaged in the transportation in:

(1) Interstate or foreign commerce of any explosive or other dangerous article as defined in "Regulations for Transportation of Explosives and Other Dangerous Articles by Land and Water in Rail Freight, Express, and Baggage Service, and by Motor Vehicle (Highway), and Water, Including Specifications for Shipping Containers";

(2) Interstate or foreign commerce of passengers or property other than said explosives and other dangerous articles while such motor vehicle simultaneously is engaged in any movement in intrastate commerce of any said explosive or other dangerous article;

(b) Parts 1, 2, 3, 4, 5, and 6 of the Motor Carrier Safety Regulations, Revised (Parts 192, 193, 194, 195, 191, and 196, respectively of Title 49 CFR), shall apply without exception or exemption in identical manner to common carriers by motor vehicle and contract carriers by motor vehicle to the extent that the

[1] As to what articles are included within the term "explosives and other dangerous articles", the motor carrier is referred to the definitions contained in "Part 3—Regulations Applying to Shippers" of the "Regulations for Transportation of Explosives and Other Dangerous Articles by Land and Water in Rail Freight, Express, and Baggage Services, and by Motor Vehicle (Highway), and Water, Including Specifications for Shipping Containers" (Part 75 of Title 49 CFR). As will be noted from said regulations, the term "explosives and other dangerous articles" encompasses the following classes of articles: (1) explosives, (2) inflammable liquids, (3) inflammable solids and oxidizing materials, (4) corrosive liquids, (5) compressed gases, and (6) poisons. "Part 2—Commodity List of Explosives and Other Dangerous Articles Containing the Shipping Name or Description of All Articles Subject to These Regulations" (Part 73 of Title 49 CFR) is also to be found in the aforementioned regulations.

motor vehicles of said motor carriers are engaged in the transportation in:

(1) Interstate or foreign commerce of any explosive or other dangerous article as defined in "Regulations for Transportation of Explosives and Other Dangerous Articles by Land and Water in Rail Freight, Express, and Baggage Services, and by Motor Vehicle (Highway), and Water, Including Specifications for Shipping Containers";

(2) Interstate or foreign commerce of passengers or property other than said explosives and other dangerous articles while such motor vehicle simultaneously is engaged in any movement in intrastate commerce of any said explosive or other dangerous article.

§ 197.02 *Compliance required.* Every motor carrier and his or its officers, agents, employees, and representatives concerned with the transportation of explosives and other dangerous articles by motor vehicle, shall become conversant and comply with the regulations prescribed herein; and, to this end, each motor carrier shall instruct such persons.

§ 197.03 *Emergency equipment and accessories not prohibited.* The provisions of this part are not to be construed to pertain to the carrying of (a) emergency flares (pot torches), electric lanterns, and fusees intended to be used to protect the motor vehicle so long as the carrying of such equipment is in accordance with Rule 2.081 of Part 2, entitled "Driving of Motor Vehicles", and Rule 3.3491 of Part 3, entitled "Parts and Accessories Necessary for Safe Operation" (§§ 193.081 and 194.3491 of Title 49 CFR), or (b) well protected and properly installed accessories for operation, such as fuel in fuel tanks or other fuel containers, storage or other electric battery or batteries, or other equipment used in the operation of the motor vehicle, provided that the carrying of such equipment and accessories is otherwise in compliance with the regulations in this part.

§ 197.1 *Driving rules.*

§ 197.101 *Motor vehicles not to be left unattended.* No driver of a motor vehicle transporting any explosive or other dangerous article shall leave such motor vehicle unattended upon any public street or highway, except when such driver is engaged in the performance of normal operations incident to his duties as the operator of the vehicle to which he is assigned; nor shall any driver leave unattended any motor vehicle loaded with dangerous or less dangerous explosives upon any public street or highway, or elsewhere during the course of transportation. Nothing contained in this Section shall be construed to relieve the driver of any requirement for the protection of any such motor vehicle left unattended upon any public street or highway, as provided in Part 2 of the Motor Carrier Safety Regulations, Revised.

§ 197.102 *Avoidance of congested places.* Drivers of motor vehicles transporting any explosive, inflammable liquid, inflammable compressed gas, or poisonous gas shall avoid, so far as practicable, and, where feasible, by prearrangement of routes, driving into or through congested thoroughfares, places where crowds are assembled, streetcar tracks, tunnels, viaducts, and dangerous crossings.

§ 197.103 *Reduce refuelings to minimum.* Except for fuel containers for Diesel engine fuels, the fuel tank or tanks on any motor vehicle in which is to be transported any explosive, inflammable liquid, inflammable compressed gas, or poisonous gas shall be suitably filled prior to the commencement of transportation, and subsequent refilling shall be reduced to the minimum number necessary. If the engine is provided with an electric ignition system, it shall be turned off and the engine stopped during the refueling process; and if with a magneto, it shall be grounded.

§ 197.104 *Caution passing fires.* No driver of a motor vehicle transporting any explosive, inflammable liquid, inflammable solid, oxidizing material, or inflammable compressed gas shall drive past fires of any kind burning on or near the highway or other thoroughfare until after having taken due caution to ascertain that such passing can be made with safety.

§ 197.105 *Smoking.*

§ 197.1051 *No smoking while driving.* Smoking on or about any motor vehicle loaded with or transporting any explosive, inflammable liquid, inflammable solid, oxidizing material, or inflammable compressed gas, or smoking on or about any tank motor vehicle used for the transportation of the liquids described is forbidden.

§ 197.1052 *Smoking forbidden unless lading in closed body.* Smoking on or about any motor vehicle transporting inflammable solids or oxidizing materials is forbidden unless the lading is entirely contained within a closed body.

§ 197.106 *Parking in congested places.* Except where the necessities of the operation make impracticable the application of this rule, no driver of a motor vehicle transporting any dangerous or less dangerous explosive shall park on any public street adjacent to or in proximity to any bridge, tunnel, dwelling, building, or place where persons work, congregate, or assemble.

§ 197.107 *Safety matches.* Drivers or anyone else, except passengers on busses, upon a motor vehicle transporting any inflammable liquid or any tank motor vehicle used for the transportation of such dangerous article, whether loaded or empty, may carry only matches commonly known as "safety matches".

§ 197.108 *Jars, jolts, etc.* Drivers of any motor vehicle transporting any corrosive liquid shall exercise especial care to avoid violent jars, jolts, bumps, or sudden accelerations or decelerations in any direction likely to produce shifting or breaking of the contents of the motor vehicle.

§ 197.2 *Equipment rules.*

§ 197.201 *Wheels and tires.* Every motor vehicle, other than a semitrailer or pole trailer, transporting any explosive or other dangerous article shall be equipped with at least two axles upon which shall be mounted at least four wheels. All of the road wheels on every motor vehicle shall be equipped with pneumatic rubber tires.

§ 197.202 *Electric lights required.* No motor vehicle transporting any explosive or other dangerous article shall be equipped with any other kind of artificial lighting devices than electric. Lighting circuits shall have suitable overcurrent protection (fuses or automatic circuit breakers). The wiring shall have adequate current-carrying capacity and mechanical strength, and shall be suitably secured, insulated, and protected against physical damage.

§ 197.203 *Brakes required on all wheels.* Every motor vehicle transporting any explosive or other dangerous article shall be equipped with reliable brakes on all wheels.

§ 197.204 *Exhaust system.* Every motor vehicle transporting any explosive or other dangerous article shall have all parts of the exhaust system constructed and installed in a workmanlike manner; in no case shall the system be exposed to accumulation of grease, oils, gasoline, or other fuels. In engine installations using gasoline or like liquid fuels, butane, propane, mixtures thereof, or similar fuels, the exhaust system shall have ample clearance from fuel lines and combustible materials. A muffler cut-out or equivalent device shall not be installed.

§ 197.205 *Fuel system.*

§ 197.2051 *Fuel-feed system.* Every motor vehicle transporting any explosive or other dangerous article shall have all portions of the fuel-feed system, including carburetor, pumps, and all auxiliary mechanisms and connections constructed and installed in a workmanlike manner, and so constructed and located as to minimize the fire hazard, with no readily combustible materials used therein and shall, except for Diesel fuel connections, be well separated from the engine exhaust system. A pressure-release device shall be provided where necessary. The fuel-feed lines shall be made of materials not adversely affected by the fuel to be used or by other materials likely to be encountered, of adequate strength for their purpose, well secured to avoid chafing or undue vibration, having a readily accessible and reliable shut-off valve or stop-cock. Joints depending upon solder for mechanical strength and liquid tightness shall not be used in the fuel system at or near the engine or its accessories, unless the solder has a melting point of not less than 340° F., or unless a self-closing thermally-controlled valve set to operate at not exceeding 300° F., or other equivalent automatic device, shall be installed in the fuel line on the fuel tank side of such joint.

§ 197.2052 *Carburetor.* Every motor vehicle transporting any explosive or other dangerous article shall have the carburetor, if used, so constructed and installed as to minimize the hazards due to backfiring and other hazards inherent

in its use and shall be provided with direct drainage for overflow gasoline.

§ 197.2053 *Gasoline or Diesel fuel tanks.* Every motor vehicle using gasoline or Diesel fuel for propulsion and engaged in transporting any explosive or other dangerous article shall have the fuel tanks so designed, constructed, and installed as to present no hazard not inherent in their purpose or use, and shall be so arranged as to vent during filling operations and as to permit complete drainage without removal from their mountings. The tanks shall be arranged so that no fuel will be spilled on any part of the exhaust system in the event of overflow or spillage.

§ 197.206 *Bulkhead or motor vehicles transporting explosives exclusively.* Any motor vehicle used exclusively for the transportation of explosives shall have the bulkhead between the cab and engine protected with a covering of asbestos sheeting not less than one-eighth inch thick, or by other noninflammable insulating material affording equivalent protection, which in turn shall be covered by a non-rusting metallic sheet of sufficient thickness to afford mechanical protection to the insulating material.

§ 197.207 *Securing of auxiliary parts or machinery on motor vehicles transporting nitroglycerin.* Every motor vehicle used for the transportation of liquid nitroglycerin shall have all winches, other hoisting apparatus, or other auxiliary machinery or apparatus, if used, securely attached to the motor vehicle, and no such part or apparatus shall extend sidewise beyond the fender lines; means shall be provided for the securing of chains, cables, or any other parts of any such auxiliary apparatus while in transit.

§ 197.208 *Can boxes on tank motor vehicles.* The can and bucket boxes on tank motor vehicles transporting any inflammable liquid shall be so lined or constructed as to prevent sparking.

§ 197.209 *Heating systems.* Every tank motor vehicle used for the transportation of corrosive liquids which is equipped with a system for heating the contents of the cargo tank by means of steam or hot water under pressure shall have such heating system tested with hydrostatic pressure and proved to be tight at 200 pounds per square inch gage. Heating systems employing flues for the heating of the contents of the cargo tanks shall be tested by such means as to insure against the leakage of the cargo tanks either into the flues or into the atmosphere. Such tests shall be made at no less frequent intervals than tests required for the cargo tank.

It is further ordered, That a copy of this order be served upon all the parties of record herein, and that notice hereof be given to the general public by filing it, as required by law, with the Division of the Federal Register, of the National Archives Establishment, and by posting a copy hereof in the office of the Secretary of the Commission in Washington;

And it is further ordered, That this order shall be effective May 15, 1942.

By the Commission, division 3.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 42-3399; Filed, April 16, 1942; 11:18 a. m.]

Notices

WAR DEPARTMENT.

[Civilian Exclusion Order No. 6]

HEADQUARTERS WESTERN DEFENSE COMMAND AND FOURTH ARMY, PRESIDIO OF SAN FRANCISCO, CALIFORNIA

PERSONS OF JAPANESE ANCESTRY EXCLUDED FROM RESTRICTED AREAS NOS. 1 AND 2

APRIL 7, 1942.

1. Pursuant to the provisions of Public Proclamations Nos. 1 [1] and 2 [2], this Headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that from and after 12 o'clock noon, P. W. T., of Tuesday, April 14, 1942, all persons of Japanese ancestry, including aliens and non-aliens, be excluded from those portions of Military Area No. 1 in the County of Los Angeles, State of California, described as follows:

Restricted Area No. 1: All that portion of the County of Los Angeles, State of California, lying generally south of the east-west line established by Manchester Avenue, and Manchester Avenue extended, and lying generally west of the north-south line established by Western Avenue, excepting therefrom all that area from which persons of Japanese ancestry, both aliens and non-aliens, have been excluded heretofore by order of this Headquarters.

Restricted Area No. 2: All that portion of the County of Los Angeles, State of California, bounded on the south by Artesia Street, on the southeast and east by the Los Angeles County boundary line, on the north by Whittier Boulevard, and on the west by Atlantic Boulevard.

2. A responsible member of each family, and each individual living alone, in the above-described areas will report between the hours of 8:00 A. M. and 5:00 P. M., Wednesday, April 8, 1942, or during the same hours on Thursday, April 9, 1942, to their respective Civil Control Station located at:

Restricted Area No. 1: 4311 147th Street, Los Angeles (Lawndale), Calif.

Restricted Area No. 2: 112 South Paramount Boulevard, Downey, Calif.

3. Any person subject to this order who fails to comply with any of its provisions or with the provisions of published instructions pertaining hereto or who is found in the above-restricted areas after 12 o'clock noon, P. W. T., of Tuesday, April 14, 1942, will be liable to the criminal penalties provided by Pub. Law No. 503, 77th Cong., approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining In, Leaving, or Committing Any Act in Military Areas or Zones" and alien Japanese will be subject to immediate apprehension and internment.

[SEAL] J. L. DEWITT,
Lieutenant General, U. S. Army,
Commanding.

Confirmed:

J. A. ULIO,
Major General,
The Adjutant General.

[F. R. Doc. 42-3376; Filed, April 16, 1942; 10:24 a. m.]

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. A-1334]

PETITION OF DISTRICT BOARD NO. 4 FOR DEFINITION OF VESSEL FUEL IN THE SCHEDULE OF EFFECTIVE MINIMUM PRICES FOR DISTRICT NO. 4 FOR ALL SHIPMENTS EXCEPT TRUCK AND MARKETING RULES AND REGULATIONS TO INCLUDE COALS SHIPPED TO RAILROAD UNLOADING PIERS AND SHIPPED TO DOCKS WHICH ARE NOT SUCH PIERS

NOTICE OF AND ORDER FOR HEARING

A petition, pursuant to the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party;

It is ordered, That a hearing in the above-entitled matter under the applicable provisions of said Act and the rules of the Division be held on May 12, 1942, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street NW., Washington, D. C. On such day the Chief of the Records Section in room 502 will advise as to the room where such hearing will be held.

It is further ordered, That Travis Williams or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, take evidence, to continue said hearing from time to time, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all parties herein and to persons or entities having an interest in this proceeding and eligible to become a party herein. Any person desiring to be admitted as a party to this proceeding may

[1] 7 F.R. 2320.
[2] 7 F.R. 2405.

file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to Section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petition is supported or opposed or on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before May 7, 1942.

All persons are hereby notified that the hearing in the above-entitled matter and any orders entered therein, may concern, in addition to the matter specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment to the petition, petitions of intervention or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of this petition.

The matter concerned herewith is in regard to the petition of District Board No. 4 for definition of the term "vessel fuel" in the Schedule of Effective Minimum Prices for District No. 4 and in the Marketing Rules and Regulations to include coals shipped to railroad unloading piers with the eleven cent (11¢) dumping charge and coals shipped to docks which are not railroad unloading piers.

Dated: April 14, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc 42-3383; Filed, April 16, 1942; 10:57 a. m.]

[Docket Nos. A-1354, and A-1354, Part II]

PETITION OF DISTRICT BOARD NO. 1 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES IN DISTRICT NO. 1, PURSUANT TO SECTION 4 II (d) OF THE BITUMINOUS COAL ACT OF 1937 AND PETITION OF DISTRICT BOARD NO. 1 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF THE OAK VALLEY MINE (MINE INDEX NO. 3453) AND THE HOLDEN MINE (MINE INDEX NO. 3454) OF THE P & G COAL COMPANY FOR ALL SHIPMENTS EXCEPT TRUCK AND FOR TRUCK SHIPMENTS

MEMORANDUM OPINION AND ORDER SEVERING DOCKET NO. A-1354 PART II FROM DOCKET NO. A-1354, ORDER GRANTING TEMPORARY RELIEF IN PART IN DOCKET NO. A-1354 PART II, AND NOTICE OF AND ORDER FOR HEARING IN DOCKET NO. A-1354 PART II

The original petition in the above-entitled matter which was filed with this Division requests the issuance of orders establishing temporary and permanent price classifications and minimum prices for the coals of certain mines in District No. 1.

As indicated in an Order issued today in Docket No. A-1354, a reasonable showing of necessity has been made for the relief prayed for by the petitioner, except as to the establishment of price classifications and minimum prices of the coals of Oak Valley Mine (Mine Index No. 3453) and the Holden Mine (Mine Index No. 3454) of the P & G Coal Company.

The original petitioner proposes for the coals of the Oak Valley Mine (Mine Index No. 3453) and the Holden Mine (Mine Index No. 3454) of the P & G Coal Company in Size Groups 1 to 5, inclusive, price classifications "H", "H", "H", "J", "J", respectively, for all shipments except truck, and minimum prices of 235, 210, 210, 195 and 185 cents per net ton, respectively, for truck shipments. It appears, however, that such price classifications and minimum prices are lower than those of comparable and analogous coals in District No. 1, and the original petitioner has not set forth sufficient facts to warrant the establishment of the classifications and minimum prices proposed without a hearing. It further appears that a reasonable showing of necessity has been made for the granting of temporary relief for such coals, pending a hearing, but that the price classifications and minimum prices therefore should conform to those heretofore granted for comparable and analogous coals.

Now, therefore, it is ordered, That the portion of Docket No. A-1354 relating to the coals of the Oak Valley Mine (Mine Index No. 3453) and the Holden Mine (Mine Index No. 3454) of the P & G Coal Company for all shipments except truck and for truck shipments, respectively, be, and it hereby is, severed from the remainder of Docket No. A-1354 and designated as Docket No. A-1354 Part II.

It is further ordered, That a hearing in Docket No. A-1354 Part II under the applicable provisions of said Act and the rules of the Division be held on May 6, 1942, at 2 o'clock in the afternoon of that day at a hearing room of the Bituminous Coal Division, Washington, D. C. On such day the Chief of the Records Section in Room 502 will advise as to the room where such hearing will be held.

It is further ordered, That Charles O. Fowler, or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officer so designated to preside at such hearing is hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, take evidence, to continue said hearing from time to time, and to prepare and submit to the undersigned proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all parties herein and to persons or entities having an interest in these proceedings and eligible to become a party herein. Any person desiring to be admitted as a party to this proceeding may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division in proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before May 1, 1942.

All persons are hereby notified that the hearing in the above-entitled matter and any orders entered therein may concern, in addition to the matters specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment to the petition, petitions of intervention or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of this petition.

The matter concerned herewith is in regard to the petition of District Board No. 1 for the establishment for the coals of the Oak Valley Mine (Mine Index No. 3453) and the Holden Mine (Mine Index No. 3454) of the P & G Coal Company in Size Groups 1 to 5, inclusive, of Price Classifications "H", "H", "H", "J", "J", respectively, for all shipments except truck, and minimum prices of 235, 210, 210, 195 and 185 cents per ton, respectively, for truck shipments.

It is further ordered, That pending final disposition of Docket No. A-1354 Part II, temporary relief is granted as follows: Commencing forthwith the Schedules of Effective Minimum Prices for District No. 1 for All Shipments Except Truck and for Truck Shipments are supplemented to include the price classifications and minimum prices set forth in the schedules marked "Temporary Supplement R," and "Temporary Supplement T," annexed hereto and made a part hereof.

Notice is hereby given that applications to stay, terminate or modify the temporary relief granted herein may be filed pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

Dated: April 11, 1942.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-3382; Filed, April 16, 1942; 10:56 a. m.]

[Docket No. A-1298, Part II]

PETITION OF DISTRICT BOARD NO. 9 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF MINE INDEX NO. 266 AND FOR A CHANGE IN SHIPPING POINT FOR THE COALS OF MINE INDEX NO. 984, IN DISTRICT NO. 9, FOR ALL SHIPMENTS EXCEPT TRUCK, PURSUANT TO SECTION 4 II (d) OF THE BITUMINOUS COAL ACT OF 1937

ORDER DISMISSING PETITION

The original petitioner having moved that the proceedings in the above-entitled matter be dismissed without prejudice; and there having been no opposition thereto;

Now, therefore, it is ordered, That the original petition in the above-entitled matter be, and the same hereby is, dismissed, without prejudice.

Dated: April 14, 1942.

DAN H. WHEELER,
Acting Director.

[F. R. Doc. 42-3381; Filed, April 16, 1942; 10:55 a. m.]

[General Docket No. 21]

IN THE MATTER OF DETERMINING THE EXTENT OF CHANGE, IF ANY, IN EXCESS OF TWO CENTS PER NET TON IN THE WEIGHTED AVERAGE OF THE TOTAL COSTS OF ANY OF THE MINIMUM PRICE AREAS; AND OF REVISING THE EFFECTIVE MINIMUM PRICES AS MAY BE REQUIRED BY REASON OF ANY SUCH CHANGE IN COSTS

ORDER AND OPINION OF THE SECRETARY OF THE INTERIOR ON REVIEW OF QUESTIONS OF LAW AND POLICY

This is a proceeding instituted on its own motion by the Bituminous Coal Division of the Department of the Interior pursuant to the Bituminous Coal Act of 1937, as amended, for the purpose of (1) determining for the various minimum price areas the extent of change, if any, in excess of two cents per net ton in the weighted average of the total costs of producing bituminous coal as heretofore determined by the Director in General Docket No. 15, and (2) making such revision in the effective minimum prices as may be made necessary as a result of any changes in cost thus determined.

The Order for a hearing issued by the Director of the Division on May 2, 1941, provided that the hearing should be conducted in two phases: the first, concerning the extent of change, if any, in the weighted average of the total costs; and the second, concerning such revision in the effective minimum prices as may be necessary. Except for this review, the first phase of the proceeding has now been finished. Its history is set out in the Opinion of the Acting Director as well as in the Examiner's report and need not be repeated here.

Under Reorganization Plan II, effective July 1, 1939, the functions of the former National Bituminous Coal Commission were "transferred to the Secretary of the Interior to be administered under his direction and supervision by such division, bureau or office" as he should determine. These functions were given by me to the Bituminous Coal Division. To facilitate the exercise of my directive and supervisory authority over it—an authority, to repeat what I said in my Findings and Opinion in General Docket No. 15, which does not entitle the parties to any proceeding to a review before me as a matter of right[1]—the Acting Director, with my approval, issued an Order for Procedure dated January 27, 1942, providing that parties to the proceeding might file with me requests to review specified questions of law and policy. Such requests for review were filed by 13 of the parties. After consideration of them I issued an order dated February 18, 1942, consenting to review four of the questions suggested by these requests and agreeing to receive briefs on them. The four questions are:

1. Whether the divisor to be used in computing the per ton reasonable selling costs should be the total ascertainable tonnage or the total tonnage sold on the open market.

2. Whether the criteria employed by the Acting Director in determining "reasonable costs of selling" were correct.

3. Whether the Bituminous Coal Act permits the adjustment of the weighted average of the total costs ascertained for 1940 in order to reflect changes established to have occurred in 1941.

4. What the standards of quantity and quality of proof shall be to establish anticipated changes in cost occurring in 1941.

Briefs on one or more of these questions have been filed by District Boards 1, 2, 3, 4, 7, 8, and 11, the Associated Industries of New York, Inc., and the Bituminous Coal Consumers' Counsel.

Before considering these questions I should like to make a few general comments. The requests for review that were filed with me were relatively few. This and the nature of the objections raised both in the requests and in the briefs which I have received are indicative, I think, of the thoroughness and completeness with which this proceeding was handled by the Coal Division, the District Boards, Consumers' Counsel and other parties. When last I had occasion to review a general proceeding before the Coal Division—General Docket No. 15—I was confronted with vigorous charges that the then-contemplated prices and rules and regulations would prove unworkable and indeed disruptive of the bituminous coal industry. The history of the industry since that time has proved these fears unsound. The record in this cost proceeding furnishes ample evidence that the Guffey Coal Act is workable and, indeed, that it is working well. This is doubtless due not alone to the efforts of the Coal Division but also to the helpful and understanding cooperation of the majority of the industry. I think it can now be said that the objective of the Congress—a stabilized bituminous coal industry—is being achieved.

I

The Question Whether the Divisor To Be Used in Computing the Per Ton Reasonable Selling Costs Should Be the Total Ascertainable Tonnage or the Total Tonnage Sold on the Open Market

The District Boards which have filed briefs on this question urge that the Acting Director erred in his determination of the reasonable selling cost per ton because he chose as a divisor for the total selling cost the ascertainable tonnage of each district rather than its commercial tonnage. That the difference is substantial is clear. If commercial tonnage were used as the divisor in computing the per ton costs of selling, the Acting Director's determination of costs would be increased by an average of 3.27 cents per ton for the United States[2]—that is, by about $11,000,000 for the 1940 commercial tonnage.

The District Boards' argument is that captive tonnage has no selling cost and that, therefore, to adopt a total ascertainable tonnage divisor is to make too little allowance for the selling cost of commercial tonnage.[3] They urge that this defeats the purpose of the Act and they contend that the word "reasonable," which is prefixed in the Act to "costs of selling," was intended or should be so construed as to cover this point.

The Examiner was inclined to agree with the contentions of the District Boards. But he thought himself bound by the decision in General Docket No. 15 that ascertainable tonnage was to be used as the divisor for determining per ton costs. Most of these petitioners raise no question about the use of total ascertainable tonnage as a divisor for producing and administrative expenses;[4] all of them seek to limit it to those items. The Acting Director held that it should apply to producing, administrative and selling expenses alike.

I must agree with the Acting Director's decision on this point. The Act reads thus:

"Each district board shall * * * propose minimum prices * * *. Said prices shall be proposed so as to yield a return per net ton * * * equal as nearly as may be to the weighted average of the total costs, per net ton, determined as hereinafter provided, of the tonnage of such minimum price area. The computation of the total costs shall include * * * direct expenses of production * * * and reasonable costs of selling and the cost of administration."

In effect, the petitioners are asking that the per ton cost of coal, so far as producing and administrative expenses go, be derived by using a total ascertainable tonnage divisor and that the per ton cost, so far as selling expenses go, be derived by using a commercial tonnage divisor. Except for the word "reasonable" I see nothing in the Act on which such a distinction could be predicated. And the word "reasonable," as I shall indicate later in this opinion and as Consumers'

[1] *Cf.* Attorney General's opinion of January 28, 1941, to the President, 40 Op. Atty. Gen. No. 3, dealing with the construction of the phrase "direction and supervision" as it appears in the statutes governing the Copyright Office and the Librarian of Congress.

[2] For Minimum Price Area No. 1, the increase would be 3.55 cents; for Price Area No. 2, 1.34 cents; for Price Area No. 3, 3.68 cents; for Price Area No. 4, 1.94 cents; for Price Area No. 5, 2.31 cents; for Price Area No. 6, 3.35 cents; for Price Area No. 7, 6.71 cents; for Price Area No. 9, 10.89 cents; and for Price Area No. 10, 4.91 cents.

[3] So far as any of the District Boards argue, as District Board No. 3 does, that "If the total tonnage produced is used as a divisor, the commercial mines will never recoup their selling expense" they are going beyond the present phase of this proceeding which is concerned only with cost determinations. How the problem should be treated in the second phase of the proceeding concerned with realization is a matter with which I have no concern at this time.

[4] Counsel for District Board No. 4, however, says in his brief: "Section 4 II (1) exempts captive tonnage from the operations of section 4 of the Act. This being so, the costs and tonnage of captive mines are unimportant and should not be considered in the determination of prices for coal subject to section 4 II (a) and section 4 II (b) of the Act." And counsel for District Board No. 2 suggests in his brief that "the entire problem of construing the cost provisions in section 4 II (a) of the Act should be reviewed and no interpretation given to that language by the administrative agencies in General Docket No. 15 should be deemed as a binding precedent in this proceeding." District Board No. 2, however, did not in its request for review ask that I consider the problem thus raised.

Counsel points out, serves an entirely different function from the one proposed for it here. It is true that dividing the selling cost of the commercial tonnage by the total ascertainable tonnage yields less than the actual selling cost per commercial ton. But it is equally true that, in many districts and in the country as a whole, dividing the producing and administrative expenses of total ascertainable tonnage by the total ascertainable tonnage yields more per ton than the actual producing and administrative expenses of the commercial tonnage.[5] I could not hold that the proper divisor for ascertaining the selling expenses per ton is the commercial tonnage without disturbing the determination in General Docket No. 15 that, for all expenses, the proper divisor is total ascertainable tonnage. This determination was predicated on the language of section 4 II (a)[6] and section 4 II (b)[7] of the Act. Only one party (District Board No. 4) requested me to review the question generally[8] and several others have stated their agreement, except for its application to selling costs, with its disposition in General Docket No. 15 and in this proceeding. Under these circumstances it would be inappropriate for me to consider it at this time.

II

The Question Whether the Criteria Employed by the Acting Director in Determining "Reasonable Costs of Selling" Were Correct

Included as one item in the computation of the total costs per net ton on which the Act requires minimum prices to be based are the "reasonable costs of selling." It was the Acting Director's position, as it is mine, that the "reasonable" in this phrase is a consumer-protecting adjective.[9] It ties in closely with the statutory mandate that minimum prices determined by the Division "shall have due regard to the interests of the consuming public." And its objective, I believe, is akin to that of the broad power to investigate "the problem of marketing to lower distributing costs for the benefit of consumers" which is given to the Division by section 14 (a) of the Act.

To determine what selling costs were reasonable, as complete evidence as possible of the actual costs of selling was received and the door was opened to a showing that particular items of selling cost were unreasonable. The Acting Director found that no such showing was made. In using this procedure, the Acting Director followed a precedent established in General Docket No. 15. None of the parties proposed specific criteria for the determination of reasonable costs upon which a different procedure might have been rested, although the Consumers' Counsel objected to certain industry practices as unreasonable *per se*.

Since the Acting Director's procedure was founded on the precedent of General Docket No. 15, since no alternative to it was developed in the course of a very lengthy hearing, and for other reasons stated below, I approve of his use of it in this proceeding. However, in order to stimulate a fuller presentation of facts pertinent to "reasonable costs of selling" in future cost proceedings, I shall also take this opportunity to make some suggestions in respect to procedure for the future. I do so without any intimation that the selling costs found to be reasonable by the Acting Director, in the present proceedings, were in any respect unreasonable or that the procedure followed by the Acting Director in determining the reasonable costs of selling based upon all the pertinent evidence in the record, was anything other than a wholly justifiable procedure. I am convinced that the procedure followed by the Division was warranted for the period during which its work was getting under way and the industry was being lifted out of chaos. I believe, however, that it would be more appropriate in future proceedings for a somewhat modified course of procedure to be followed. Now that many of the doubtful and difficult questions that have turned up in the course of administering the Act have been resolved one way or the other, the Division and the parties to proceedings before it can be expected to take on some burdens which heretofore they could not reasonably be expected to assume. I suggest therefore that, so far as practicable, the following two principles should be used as a guide to the determination of reasonable costs of selling:

1. The Division should place the responsibility upon those most familiar with the practices of the industry to furnish data for the record on which to predicate a judgment as to the reasonableness of the selling costs to be included in the weighted average cost which is expected to serve as a base for minimum prices. Placing this responsibility on such parties should result in a more complete factual and legal presentation concerning the reasonableness of selling costs than could be insured by any other method. Of course, the burden of going forward with detailed evidence concerning the reasonable costs of selling may be affected by whether the industry is urging that the reasonable costs of selling have increased from a previous determined figure or whether the Consumers' Counsel is urging that the reasonable costs of selling have decreased from a previously determined figure. Such factors and other pertinent factors will no doubt be given adequate consideration by the Division in connection with the course followed in future proceedings. It may also be assumed that the Division will, to the extent consistent with its other duties, provide suitable procedures designed to elicit pertinent information with respect to reasonable costs of selling.

2. In the general test of reasonableness a proper criterion is the promotion of "the most economic cost of distribution in terms of the industry as a whole," a phrase which the Examiner used in rejecting opinion evidence as to reasonable costs of selling presented by district board witnesses.

Subsidiary to this general criterion to be taken into account in testing reasonableness, numerous other questions should, of course, so far as practicable be considered in arriving at a judgment in respect to reasonable costs of selling. Among such questions may be the reasonableness of selling costs as they apply to various classes of consumers, the justification for such variations as there may be in the selling costs of different sizes and grades of coal, the costs incurred by sales agents and distributors in the performance of their functions, with particular reference to those who are af-

[5] Consumers' Counsel, in his brief, points out that Exhibits 20–A, 20–A–1, 20–A–2 and 20–A–3 indicate that producing and administrative expenses for combined commercial and captive mines were 2.44 cents higher than for commercial mines alone in Price Area No. 1; 0.47 cents higher in Price Area No. 2; 1.23 cents higher in Price Area No. 3; 1.05 cents less in Price Area No. 4; 3.82 cents higher in Price Area No. 5; 0.83 cents higher in Price Area No. 6; 11.63 cents less in Price Area No. 7; 68.05 cents less in Price Area No. 9; and 20.82 cents less in Price Area No. 10. For the whole United States, producing and administrative expenses for both types combined were 2.95 cents higher than for commercial mines alone.

[6] "* * * each district board shall determine * * * the weighted average of the total costs of the *ascertainable* tonnage in the district * * *." (Italics added.)

[7] "The minimum prices proposed as a result of such coordination, shall not, as to any district, reduce or increase the return per net ton upon *all* the coal produced therein below or above the minimum return as provided in subsection (a) of this section by an amount greater than necessary to accomplish such coordination, to the end that the return per net ton upon the *entire* tonnage of the minimum price area shall approximate the weighted average of the total cost per net ton of the tonnage of such minimum price area." (Italics added.)

[8] See footnote 4, *supra*.

[9] What little legislative history there is bears out this position. The original draft of what became the Bituminous Coal Act of 1935 (the predecessor of the present Act) did not include the qualification to selling costs here under discussion. It was offered as an amendment on the floor of the House of Representatives by Mr. Crawford. He started to explain it in these words: "The consumers of coal in this country are therefore to be burdened with a minimum price on coal which covers marketing areas * * *." But before he finished his explanation, he was asked to yield by the Representative in charge of the bill who announced that the amendment was acceptable to the committee. (79 Congressional Record 13549, 74th Cong., 1st sess.) The meaning given to the word "reasonable" in this opinion is not only consistent with this brief indication by its proponent of what he meant by it and with other portions of the Act, as is indicated above, but it tallies with its usual meaning in other pricemaking statutes such as those under which public utilities are regulated. See, for example, *United States* v. *Morgan*, 313 U. S. 409, upholding the Secretary of Agriculture, as "guardian of the public interest," in his examination of whether particular items of expense "represented services which should properly be charged to the public," while determining reasonable rates under the Packers and Stockyards Act.

filiated with producers, the serious problem (for such I take it to be) of a great rise in selling expenses during comparatively flush markets, the reasonableness of a system of discounts and commissions so based upon the selling price of coal that an increased selling price automatically means an increased selling cost to the producer, the number of sales agents and distributors that are available and whether there are so few of them that they can charge the producers what they please or whether they are so many that to survive they must be paid more than is justifiable, the propriety of including in *reasonable* cost of selling the cost to a producer of using both a sales agent and a distributor (a practice which some contend is growing) and the effect on the promotion of an efficient selling system of allowing the industry all that it chooses to spend on selling costs.

I do not mean, by listing these questions as I do, to suggest that all of them are equally meritorious, that there are not others that can properly be considered, or that it will be necessary for every question to be explored at every cost proceeding. Not only might this last be impracticable but it might also involve a duplication of the Division's work in other proceedings without any showing that there had been a substantial change in conditions in the meantime.

A minor question with respect to reasonable selling costs which has been raised in this proceeding is that of a choice of a representative period for the determination of these costs. But this is primarily a problem of proof. On the basis of the evidence before him it was the task of the Acting Director to determine what period was most representative of actual costs and most nearly reflective of current costs and whether the period selected was free from seasonal fluctuations and not unbalanced by undesirable selling practices. I could not revise his decision without weighing the evidence. To do so would go beyond the proper limits of this review of questions of law and policy.

III

The Question Whether the Bituminous Coal Act Permits the Adjustment of the Weighted Average of the Total Costs Ascertained for 1940 in Order to Reflect Changes Established to Have Occurred in 1941

The Division's basic documents related to production, administrative and selling costs for the year 1940. Before the hearing was completed, however, a good part of 1941 had gone by. Under these circumstances, evidence was admitted to show changes in various items of cost during the first months of 1941. And on the basis of this testimony, adjustments from the data for the base year were made in these cost estimates. Of these adjustments that for labor costs, called for by the industry upon its signing a new 2-year collective bargain with the United Mine Workers of America while the hearings were going on, was by far the most substantial.

To this process of making adjustments, Associated Industries of New York, Inc., objects. Its counsel's contentions are various: that the statute limited the authority to make adjustments to those based on 1936 prices and that this authority was fully expended in General Docket No. 15; that the making of adjustments of this sort results in "a determination which is not a weighted average of actual costs of production, nor * * * based upon conditions of actually producing coal proved to be in existence at the time such determination was made;" that the adjustments made were outside the scope of the Order for a hearing made in General Docket No. 21; that, if a process of making adjustments is once indulged, the hearing will never end; and that there is no necessity in policy for the making of such adjustments since the same result can be achieved by the producers' raising their prices individually.

Three of these contentions can be disposed of with brevity. The Notice of and Order for Hearing in this proceeding was construed by the Acting Director to include as part of the subject matter of the hearing the matter of 1941 cost adjustments as well as the 1940 cost material. This review is limited to the questions of law and policy I have specified above; this minor problem of construction was not one of them. Under these circumstances there is no occasion to consider the Acting Director's action in this respect. The objection that if adjustments are once permitted a hearing will never end is an objection that can be met in a practical and fair way by the Division in each case. And the objection that there is no necessity for making adjustments since the producers can raise their own prices voluntarily is hardly consistent with the Act's purpose of preventing competition below production costs as determined in accordance with the Act.

So far as the contention that the Act forbids the making of adjustments goes—and I take it that this is the most meritorious of this series of objections—the answer is that it certainly does not do so in so many words. And it does so impliedly only if the fact that it expressly allowed such adjustments on the initial determination of costs is to be taken as a command that, upon subsequent cost determinations, such adjustments outside of the then specified cost period are not to be taken into account.[10]

But I can read no such command here. The only requirement of the Act is that there shall be "satisfactory proof * * * of a change in excess of two cents per net ton * * * in the weighted average of the total costs * * *." Like the District Boards in their briefs, I take it that the change must be an "established" one. I take it, too, that "established" goes not so much to the proof of a change as to the kind of change involved, that is, to a change which, in the light of all the evidence, can be said to be fairly permanent as opposed to one which is seasonal or temporary. I have no difficulty, for example, in saying that the United Mine Workers' contract did introduce an established change within any fair construction of the statute.

Associated Industries, however, if I read its brief rightly, further contends that such an adjustment is unwarranted and unauthorized because it results in "a determination which is not a weighted average of actual cost of production," and that a proper determination of this sort can be made only when it is "based upon conditions of actually producing coal proved to be in existence at the time such determination was made." I agree that particular items of cost actually seen operating in their industrial context are preferable to items interpolated into that context, that it is a delicate task, ordinarily, to take such an item as hourly wage rates in 1941 and apply them to 1940 man-hour tonnage. For not only could it be expected that man-hour tonnage would vary somewhat with the total tonnage produced, but the very increase in wage rates might also be expected to provoke an attempt by management to compensate for it by instituting more mechanization and more efficient use of labor.

All of these, however, are likely to be matters of slow readjustment. Compared with them the wage change is sudden, considerable, and immediate. It is not unfair, under such circumstances, to apply the new wage rates to the 1940 production in attempting to arrive at a "weighted average of the total costs." These things being so, I cannot say that the Acting Director was wrong in his determination to allow it in computing the costs of the industry.

The question stated is therefore answered in the affirmative and the decision of the Acting Director is approved.

IV

The Question of What the Standards of Quantity and Quality of Proof Shall Be to Establish Anticipated Changes in Cost Occurring in 1941

The statutory requirement is that a cost change be "established" before any allowance for it is made in computing the total costs of the industry. There is no room under the Act for making adjustments to cover cost changes which may occur subsequent to the close of the hearing. Only on facts encountered before the close of the hearing and brought to the attention of the Division can the final determination be predicated. With these remarks in mind we may proceed to answer the question: How much and what sort of proof is required to warrant saying that a clear but recent change

[10] The portion of the Act referred to reads thus: "As soon as possible after its creation, each district board shall determine * * * the weighted average of the total costs of the ascertainable tonnage produced in the district in the calendar year 1936. The district board shall adjust the wage costs so determined * * * so as to reflect as accurately as possible any change or changes which may have been established since January 1, 1936 * * * Said weighted average of the total costs shall be taken as the basis * * * for the proposal and establishment of minimum prices. Thereafter, upon satisfactory proof * * * of a change in excess of 2 cents per net ton * * * in the weighted average of the total costs * * * the Commission [Division] shall increase or decrease the minimum prices accordingly."

conforms to the statutory requirement of an established cost change?

The broad criteria can be put simply enough. The proponent of an adjustment must be prepared to show (1) that the proposed change is in effect throughout the area (whether it be the Nation or a district is immaterial) for which is is claimed [11] and (2) that it has been in effect for a sufficiently long time to justify the conclusion that, taking surrounding circumstances into consideration, it is not a mere temporary aberration, seasonal or otherwise.[12] Whatever the type of evidence that is introduced, these standards must be adhered to if the picture given by it is to be an acceptably representative one.

I may expand on the first of these two criteria by saying that, in the absence of an industry-wide investigation such as that from which the 1940 data were gathered, the problem is one of getting a fair sample from all over the area in question. What constitutes a fair sample will, obviously, depend on the homogeneity of the industry with respect to the use of any particular item. The closer the agreement—the less the spread—among the various pieces of evidence, the more reliable any conclusion drawn from them will be; the greater the disagreement the more important it is that a broad sample be had to insure that any average arrived at is a fair one.

Similarly, the second criterion is a problem of getting a sample as of a date far enough back of the date of the offering of the testimony to be able to say that, in the light of whatever later evidence is available, the cost as thus indicated has become established. Estimates based on last-minute data are not enough to satisfy this rule. Although such estimates may serve as a good check on the earlier data—to confirm or disconfirm as the case may be—sporadic pressures in the economy too frequently distort the experience of any given moment to allow it to be used by itself as a trustworthy guide to an "established" change.

Not only should the evidence conform to these two minimum requirements but particular types of evidence may require consideration of other details in addition. Three problems of this sort—namely, those arising out of the use of incomplete tabulations, attempts to extrapolate past statistical trends into the period for which adjustments were made, and the acceptance of opinion testimony—have been particularly called to my attention. I will deal with them in the order just mentioned.

Tabulations frequently turn out to be incomplete; some of the individual data that went into them are often found to have been recorded incorrectly; or, where they are based on questionnaires that are not fully self-explanatory, they may be based on misunderstanding or guesswork or influenced by a desire to reach a foregone result. Consumers' Counsel objected to the use made of various tabulations designed to show the cost to the producer of the vacation payment clause of the United Mine Workers' contract on the ground of such inaccuracies as these.

Whether such inaccuracies have been proven and if so whether they constitute adequate grounds for complete rejection of the tabulation will ordinarily be for the trier of facts to decide in the individual case. But if, and to the extent, proven, they are grounds for not taking their purported results at face value if a corrective supported by the evidence can be found which supplies a closer approximation to the truth than the tabulation itself. The Acting Director rejected the proposed corrective applied by the Examiner to the tabulations of vacation payments on the score that it would not result in a closer approximation to the truth. The Acting Director's decision in this respect is not subject to this review. Under the standard I have here formulated it would not be sufficient for the trier of facts to discard one proffered corrective without searching the evidence for alternatives. However, in this case the Examiner expressly asserts that he thoroughly considered the evidence for the best possible method of determining vacation payment costs before recommending the corrective he used, and the accuracy of this assertion has not been disputed. In the absence of any claim that a preferable corrective was justified by the evidence the Acting Director was entitled to rely on the finding of the Examiner that the corrective he proposed was the best corrective that could be found in the evidence. No party now asserts a preferable alternative. Since the Division sought for the best corrective, and since that corrective was ultimately determined to be no closer approximation to the truth than the original tabulation. I therefore find that the Division satisfied the requirements of the standard in this instance.

In another instance, Consumers' Counsel called the attention of the Division to data in and outside of the record on the basis of which it asked that an adjustment in labor costs per ton be allowed for 1941. The data in the record showed substantial decreases in per ton labor costs from 1938 to 1939 and from 1939 to 1940. To buttress this further, additional data indicating long-term trends of the same sort were called to the Division's attention but not offered in evidence. Such data are within the scope of judicial notice, subject, of course, to the general rule that evidence judicially noticed is not immune from refutation, for the purpose of proving the fact of a trend.[13] However, such data must be put in evidence and made available to attack on cross-examination if they are to be used to prove the specific amount of increase or decrease in any given item as a result of these long-term trends.[14] Consequently I need not concern myself with the general problem of proof by extrapolation from a past trend. It goes without saying that the question whether the 1938–1939 and the 1939–1940 figures which were in the record did or did not support the conclusion which Consumers' Counsel hoped for was a question for the Division to decide in the light of all the evidence in the record.

Opinion testimony was also frequently resorted to in the course of this proceeding. Much of it came in to support a claim for an upward adjustment in mine supply costs. The Examiner recommended a 10 percent allowance in this item; the Acting Director's finding was that 15 percent was proper. To this, Consumers' Counsel objects. The term "mine supplies" covers dozens of classes of articles and hundreds if not thousands of individual items. Blasting powder, locomotive wheels, lumber and brattice cloth illustrate their range. It is hardly expectable that changes in the prices of all of these items will occur at the same rate; they may even move in opposite directions on some occasions. Nor is it believable that a satisfactory estimate of the net results of so many simultaneous but disparate changes, with anything approximating a proper weight accorded to each, can be made without foundation in a computation by the witness of specific changes. The fact that a witness, who makes an estimate unsupported by such a computation puts his conclusion in the shape of a figure does not add one iota to the credibility of the evidence. The result is that so-called opinion evidence which is received to establish a change in the cost of mine supplies must be examined critically and used with the utmost of caution. It may be useful as a quick means of verifying the continued existence of a change, satisfactory evidence for which has already been adduced, or for assisting the trier of facts to reach a determination of the specific amount of a rise in price when the fact of rising prices throughout the country is a matter of common knowledge of which he can take notice. It was for the Acting Director to decide whether, supported by this undeniable fact of rising prices, the substance and quality of the opinion evidence justified fixing the extent of the increase in the costs of mine supplies at the close of the hearing at 15 percent. It is not my function to pass on the weight and credibility of this evidence. The Acting Director's statement of the substance and quality of that evidence reveals that he analyzed its

[11] The text deals with the situation in which the change in costs is claimed to be operative throughout the area. Clearly the requirements of proof would be different if it were only one or a few companies which were affected. In this case it would be enough to show (1) that their costs had changed and (2) that the effect of these changes was on the average for the area.

[12] What is a sufficiently long time will vary with the items in question. An increase in power rates by a monopolistic supplier of electricity needs far less time to demonstrate its permanence than an increase in an item bought on the open market from, perhaps, dozens or hundreds of available supplies. The bare approval of the local public service commission of the former might be enough where, in the latter case, it will need to be shown that the market is well established at or above the new level claimed.

[13] *Galveston Electric Company* v. *City of Galveston*, 258 U. S. 388, 402 (1922); *Lincoln Gas and Electric Light Company* v. *City of Lincoln*, 250 U. S. 256, 268 (1919).

[14] *Ohio Bell Telephone Company* v. *Public Utilities Commission of Ohio*, 301 U. S. 292 (1937); *United States* v. *Abilene and Southern Railway Company*, 265 U. S. 274 (1924).

foundations in specific changes or estimates and used it critically and with caution.

Since I find, without passing upon the correctness of the Acting Director's determinations of the amount, if any, of cost changes to be allowed for adjustments, that the standards which I have outlined of the quantity and quality of proof to establish such changes were followed by the Division in the course of this cost proceeding, no further action by the Division in this respect is directed.

V

Upon this review of the determinations of the Acting Director embraced in the foregoing questions of law and policy I find that the determination should be affirmed.

Accordingly, it is so ordered.

Dated: April 13, 1942.

[SEAL] HAROLD L. ICKES,
Secretary of the Interior.

[F. R. Doc. 42-3380; Filed, April 16, 1942; 10:54 a. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Agency.

[ACP-1942-Southern Great Plains-3]

1942 SPECIAL AGRICULTURAL CONSERVATION PROGRAM FOR THE SOUTHERN GREAT PLAINS AREA, SUPPLEMENT NO. 3

The 1942 Special Agricultural Conservation Program for the Southern Great Plains Area,[1] as amended, is further amended as follows:

Section 1 (a) (3) (ii) is amended to read:

(ii) For which a wheat allotment of 15 acres or less is determined and the acreage planted to wheat exceeds the allotment by 10 percent or more;

Section 1 (f) (1) is amended by the addition of item (xi) as follows:

(xi) New seedlings of perennial grasses or legumes, or lespedeza, seeded in accordance with good farming practice with flax, peas or small grains as a nurse crop. The maximum acreage which may qualify under this item shall be limited to 40 percent of the sum of the 1942 acreages of the following crops on the farm: Soybeans for beans, peanuts for oil, flax, hemp, castor beans, sugar beets, dry field peas, dry beans, canning peas, and canning tomatoes.

Section 5 (a) (1) (iii) is amended to read:

(iii) *Potatoes:* 20 cents per bushel of the normal yield for each acre of potatoes harvested in excess of the larger of 3 acres or 110 percent of its potato acreage allotment.

(Sec. 7 to 17, as amended, 49 Stat. 1148, 1915; 50 Stat. 329; 52 Stat. 31, 204, 205; 53 Stat. 550, 573; 54 Stat. 216, 727; 16 U.S.C. 590g—590q; 55 Stat. 257; Pub. Law No. 374, 77th Cong., approved Dec. 26, 1941.)

Done at Washington, D. C. this 16th day of April 1942. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CLAUDE R. WICKARD,
Secretary of Agriculture.

[F. R. Doc. 42-3390; Filed, April 16, 1942; 11:01 a. m.]

[1] 6 F.R. 6661; 7 F.R. 768, 2112.

Agricultural Marketing Administration.

[Docket No. AO 166]

NOTICE OF HEARING WITH RESPECT TO A PROPOSED MARKETING AGREEMENT AND A PROPOSED ORDER REGULATING THE HANDLING OF MILK IN THE CINCINNATI, OHIO, MARKETING AREA

Notice is hereby given of a hearing to be held at the Hotel Gibson, Cincinnati, Ohio, beginning at 10:00 a. m., e. w. t., May 5, 1942, with respect to a proposed marketing agreement and a proposed order regulating the handling of milk in the Cincinnati, Ohio, marketing area.

This notice is given pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 1940 ed. 601 *et seq.*), and in accordance with the General Regulations of the Surplus Marketing Administration, United States Department of Agriculture (6 F.R. 6570).

This public hearing is for the purpose of receiving evidence with respect to the proposed marketing agreement and order the provisions of which are hereinafter set forth in detail. The proposed marketing agreement and order have not received the approval of the Secretary of Agriculture, and at the hearing evidence will be received relative to all aspects of the marketing conditions which are dealt with by the proposed marketing agreement and order. The provisions of the proposed marketing agreement and order are as follows:

A. PROPOSED MARKETING AGREEMENT AND ORDER SUBMITTED BY THE CINCINNATI SALES ASSOCIATION

§ 922.1 *Definitions*—(a) *Terms.* The following terms shall have the following meanings:

(1) "Secretary" means the Secretary of Agriculture of the United States.

(2) "Cincinnati, Ohio, marketing area," hereinafter called the "marketing area," means the city of Cincinnati, Ohio, and the territory included within the boundary lines of Hamilton County, Ohio.

(3) "Person" means any individual, partnership, corporation, association, or any other business unit.

(4) "Producer" means any person who produces milk which is received by a handler at a plant from which under approval of the proper health authorities, milk is disposed of as milk in the marketing area, or which is caused to be diverted under the conditions set forth in subparagraph (5) of the paragraph with respect to milk diverted by a cooperative association to a plant from which no milk is disposed of as milk in the marketing area: *Provided*, That if such producer has not regularly distributed milk in the marketing area or has not disposed of milk to a handler for a period of 30 days prior to May 1, 1938, but begins the regular delivery of milk to a handler, he shall be known as a "new producer" for a period beginning with the date of his first delivery of milk and including the first two full calendar months of regular delivery following the date of first delivery to a handler, after which he shall be known as a producer.

(5) The term "handler" means any person who, on his own behalf or on behalf of others, purchases or receives milk from producers, associations of producers, or other handlers, all, or a portion, of which milk is disposed of as milk in the marketing area, and who, on his own behalf or on behalf of others, engages in such handling of milk as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate commerce in milk and its products. This definition shall be deemed to include any cooperative association with respect to the milk of any producer whose milk previously has been received by a handler which such cooperative association causes to be delivered during the delivery periods of April, May, and June to a plant from which no milk is disposed of as milk in the marketing area, for the account of such cooperative association and for which such cooperative association collects payment. This definition shall not be deemed to include any person from whom emergency milk is received or any person who handles only milk of his own production.

(6) "Delivery period" means any calendar month.

(7) "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(8) "Market administrator" means the agency which is described in § 922.2 for the administration hereof.

(9) "Emergency milk" means milk received by a handler from sources other than producers or new producers under a permit to receive such milk issued to him by the proper health authorities: *Provided*, That the total quantity of such milk received shall be in excess of the total quantity of milk diverted on the same day by a cooperative association under the conditions set forth in subparagraph (5) of this paragraph.

(10) "Cooperative association" means any cooperative association of producers which the Secretary determines (i) to have its entire activities under the control of its members, and (ii) to have and to be exercising full authority in the sale of milk of its members.

§ 922.2 *Market administrator*—(a) *Designation* The agency for the administration hereof shall be a market administrator, who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be

subject to removal at the discretion of, the Secretary.

(b) *Powers.* The market administrator shall:

(1) Administer the terms and provisions hereof; and

(2) Report to the Secretary complaints of violations of the provisions hereof.

(c) *Duties.* The market administrator shall:

(1) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(2) Pay, out of the funds provided by § 922.9 the cost of his bond, his own compensation, and all other expenses which are necessarily incurred in the maintenance and functioning of his office;

(3) Keep such books and records as will clearly reflect the transactions provided for herein, and surrender the same to his successor or to such other person as the Secretary may designate;

(4) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within two days after the date upon which he is required to perform such acts, has not (i) made reports pursuant to § 922.3 or (ii) made payments pursuant to § 922.7 and § 922.9; and

(5) Promptly verify the information contained in the reports submitted by handlers.

§ 922.3 *Reports of handlers*—(a) *Submission of reports.* Each handler shall report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(1) On or before the 10th day after the end of each delivery period, (i) the receipts of milk at each plant from producers and new producers, (ii) the receipts of milk at each plant from handlers, (iii) the receipts at each plant of milk, if any, produced by him, (iv) the receipts of milk and cream at each plant from any other source, if any, (v) the utilization of all receipts of milk for the delivery period, and (vi) the name and address of each new producer;

(2) Within 10 days after the market administrator's request with respect to each producer and new producer for whom such information is not in the files of the market administrator and with respect to a period or periods of time designated by the market administrator (i) the name and address, (ii) the total pounds of milk received, (iii) the average butterfat test of milk received, and (iv) the number of days upon which milk was received;

(3) On or before the 10th day after the end of each delivery period, his producer pay roll, which shall show for each producer and new producer (i) the total receipts of milk with the average butterfat test thereof, (ii) the amount of advance payment to such producer or new producer made pursuant to § 922.7 (a), and (iii) the deductions and charges made by the handler;

(4) On or before the 5th day after the end of each delivery period, the disposition of Class I milk outside the marketing area as follows: (i) the amount and the utilization of such milk, (ii) the butterfat test thereof, (iii) the date of such sale or disposition, (iv) the point of use, (v) the plant from which such milk was shipped, and (vi) such other information with respect thereto as the market administrator may request;

(5) On or before the day such handler receives emergency milk his intention to receive such milk;

(6) On or before the 10th day after the end of each delivery period, the receipts of emergency milk, as follows: (i) the amount of such milk, (ii) the date or dates upon which such milk was received during the delivery period, (iii) the plant from which such milk was shipped, (iv) the price per hundredweight paid, or to be paid, for such milk, (v) the utilization of such milk, and (vi) such other information with respect thereto as the market administrator may request;

(7) On or before the 10th day after each delivery period, the milk diverted by a cooperative association under the conditions set forth in § 922.1 (a) (5) as follows: (i) the amount of such milk, (ii) the date or dates upon which such milk was diverted during the delivery period, (iii) the plant to which such milk was shipped, (iv) the utilization of such milk, and (v) such other information with respect thereto as the market administrator may request.

(b) *Verification of reports.* Each handler shall make available to the market administrator or his agent (1) those records which are necessary for the verification of the information contained in the reports submitted in accordance with this section, and (2) those facilities which are necessary for the sampling and weighing of the milk of each producer and new producer.

§ 922.4 *Classification of milk*—(a) *Basis of classification.* Milk received by each handler, including milk produced by him, if any, shall be classified by the market administrator in the classes set forth in paragraph (b) of this section.

(b) *Classes of utilization.* The classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk disposed of in the form of milk or milk drinks, whether plain or flavored, and all milk not accounted for as Class II milk or Class III milk.

(2) Class II milk shall be all milk used to produce cream (for consumption as cream), creamed buttermilk, and creamed cottage cheese.

(3) Class III milk shall be all milk accounted for (i) as actual plant shrinkage but not to exceed 2½ percent of total receipts of milk from producers and new producers, and (ii) as used to produce a milk product other than those specified in Class II milk.

(c) *Interhandler and nonhandler sales.* Milk disposed of by a handler to another handler or to a person who is not a handler but who distributes milk or manufactures milk products, shall be Class I milk: *Provided,* That if the selling handler on or before the 10th day after the end of the delivery period furnishes to the market administrator a statement, which is signed by the buyer and the seller, that such milk was used as Class II milk or Class III milk, such milk shall be classified accordingly, subject to verification by the market administrator.

(d) *Computation of milk in each class.* For each delivery period, the market administrator shall compute for each handler the amount of milk in each class, as defined in paragraph (b) of this section, as follows:

(1) Determine the total pounds of milk (i) received from producers and new producers, (ii) produced by him, if any, (iii) received from other handlers, if any, (iv) received as emergency milk, if any, (v) the hundredweight of milk (and milk equivalent of cream converted at the average test of milk received from producers and new producers by the receiving handler) received from any other source, if any, and (vi) add together the resulting amounts.

(2) Determine the total pounds of butterfat received as follows: (i) multiply the weight of the milk received from producers and new producers by its average butterfat test; (ii) multiply the weight of the milk produced by him, if any, by its average butterfat test; (iii) multiply the weight of milk received from other handlers, if any, by its average butterfat test; (iv) multiply the weight of emergency milk, if any, by its average butterfat test, (v) multiply the weight of milk and cream received from any other source, if any, by its average butterfat test, and (vi) add together the resulting amounts.

(3) Determine the total pounds of milk in Class I as follows: (i) convert to half pints the quantity of milk disposed of in the form of milk or milk drinks, whether plain or flavored, and multiply by 0.5375; (ii) multiply the result by the average butterfat test of such milk; and (iii) if the quantity of butterfat so computed when added to the pounds of butterfat in Class II milk and Class III milk computed pursuant to subparagraphs (4) (ii) and (5) (ii) of this paragraph, is less than the total pounds of butterfat received, computed in accordance with subparagraph (2) of this paragraph, an amount equal to the difference shall be divided by 4.0 percent and the resulting amount shall be added to the quantity of milk determined pursuant to subdivision (i) of this subparagraph.

(4) Determine the total pounds of milk in Class II as follows: (i) multiply the actual weight of each of the several products of Class II milk by its average butterfat test; (ii) add together the resulting amounts; and (iii) divide the result obtained in subdivision (ii) of this subparagraph by 4.0 percent.

(5) Determine the total pounds of milk in Class III as follows: (i) multiply the actual weight of each of the several products of Class III milk by its average butterfat test; (ii) add together the resulting amounts; (iii) subtract the total pounds of butterfat in Class I milk and

Class II milk, computed pursuant to subparagraphs (3) (ii) and (4) (ii) of this paragraph, and the total pounds of butterfat computed pursuant to subdivision (ii) of this subparagraph, from the total pounds of butterfat computed pursuant to subparagraph (2) of this paragraph, which resulting quantity shall be allowed as plant shrinkage for the purposes of this paragraph (but in no event shall such plant shrinkage allowance exceed 2½ percent of the total receipts of butterfat by the handler); (iv) add together the results obtained in subdivisions (ii) and (iii) of this subparagraph; and (v) divide the sum obtained in (iv) of this subparagraph by 4.0 percent.

(6) Determine the classification of milk received from producers and new producers as follows:

(i) Subtract pro rata out of such class the quantity of milk produced by such handler.

(ii) Subtract from the total pounds of milk in each class the total pounds of milk which were received from other handlers and used in such class.

(iii) Subtract pro rata out of each class the total pounds of emergency milk.

(iv) Subtract from the total pounds of milk in each class the total pounds of milk (and milk equivalent of cream converted at the average test of milk received from producers and new producers by the receiving handler), except emergency milk received from sources other than producers, new producers, or handlers and used in such class.

(e) *Reconciliation of utilization of milk by classes with receipts of milk from producers and new producers.* (1) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (f) of this section, is less than the receipts of milk from producers and new producers, the market administrator shall increase the total pounds of milk in Class III for such handler by an amount equal to the difference between the receipts of milk from producers and new producers and the total utilization of milk by classes for such handler.

(2) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (f) of this section, is greater than the receipts of milk from producers, the market administrator shall decrease the total pounds of milk in Class III for such handler by an amount equal to the difference between the receipts of milk from producers and new producers and the total utilization of milk by classes for such handler.

§ 922.2 *Prices*—(a) *Class prices.* Each handler shall pay at the time and in the manner set forth in § 922.7 not less than the following prices for milk received at such handler's plant, on the basis of milk of 4.0 percent butterfat content, as follows:

(1) Class I milk: $3.60 per hundredweight: *Provided*, That with respect to Class I milk disposed of by a handler through a recognized relief agency or under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be $2.95 per hundredweight;

(2) Class II milk: $2.75 per hundredweight;

(3) Class III milk: Except as set forth in subparagraph (4) of this paragraph, the price per hundredweight which shall be calculated by the market administrator as follows: Multiply by 4 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, and add 50 percent thereof;

(4) In the case of Class III milk disposed of as butter the price per hundredweight shall be the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, plus 2 cents, multiplied by 4. In the event that the total receipts of milk, excepting emergency milk, by all handlers from producers and new producers during the delivery period, as ascertained by the market administrator from reports submitted by handlers pursuant to § 922.3 (a), are less than 120 percent of the total quantity of milk disposed of as Class I and Class II milk by such handlers, computed pursuant to § 922.4, the price set forth above shall apply to a quantity of milk disposed of as butter but not to exceed 10 percent of such Class I and Class II milk.

(b) *Price of milk disposed of outside the marketing area.* The price to be paid by handlers for Class I milk disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be, as ascertained by the market administrator, such price as is being paid to farmers in the market where such milk was disposed of, for milk of equivalent use, subject to a reasonable adjustment on account of transportation with respect to Class I milk moved from the handler's plant in the marketing area to the plant outside the marketing area where such milk was loaded on wholesale and retail routes.

(c) *Computation of value of milk for each handler.* (1) For each delivery period the market administrator shall compute the value of milk which each handler has received from producers and new producers, as follows:

(i) Multiply the hundredweight of milk in each class, computed in accordance with § 922.4 (f) and (g) by the respective class price for 4.0 percent milk: *Provided*, That, if the average butterfat content of milk received from producers and new producers by such handler is more than 4.0 percent, there shall be added to each class price an amount equal to 1/40 of the price for Class III milk, as set forth in § 922.5 (a) (4), for each one-tenth of 1 percent of average butterfat content above 4.0 percent; and if the average butterfat content of milk received from producers and new producers by such handler is less than 4.0 each class price an amount equal to 1/40 of such price for Class III milk, for each one-tenth of 1 percent of average butterfat content below 4.0 percent: *And provided further*, That if such handler has percent, there shall be subtracted from received milk (or cream), except emergency milk, from sources other than producers, new producers, or handlers, as referred to in § 922.4 (f) (6) (iv) and has disposed of such milk (or cream) other than as butter, there shall be added to the value of milk thus determined an amount computed as follows: Multiply the hundredweight of such milk (or milk equivalent of cream) by the difference between the Class III price set forth in § 922.5 (a) (4) and the price applicable to the class in which it was disposed. For the hundredweight of milk involved in any adjustment made pursuant to § 922.4 (g), the handler shall be debited or credited, as the case may be, at the Class III price set forth in § 922.5 (a) (4).

(ii) Add together the resulting amounts.

(iii) If, in the verification of reports submitted by the handler, the market administrator discovers errors in such reports which result in payments due the producer-settlement fund or the handler for any previous delivery periods, there shall be added or subtracted, as the case may be, the amount necessary to correct any such errors.

(d) *Notification to each handler of value of milk.* On or before the 13th day after the end of each delivery period, the market administrator shall bill each handler for the value of milk computed in accordance with this section.

§ 922.6 *Computation and announcement of uniform price.* For each delivery period, the market administrator shall compute the uniform price, as provided in paragraph (a) of this section.

(a) *Computation of uniform price.* The market administrator shall compute the uniform price per hundredweight of milk received by handlers during each delivery period as follows:

(1) Add together the values of milk computed in § 922.5 (e) for each handler who made the payments to the producer-settlement fund as required by § 922.7 (b).

(2) Subtract from such sum the amounts calculated pursuant to § 922.8 (a) (2).

(3) Subtract, if the average butterfat test of all milk is greater than 4.0 percent, or add, if the average butterfat test of such milk is less than 4.0 percent, an amount computed as follows:

Multiply the hundredweight of milk by the variance of such average butterfat test from 4.0 percent, and multiply the resulting amount by $0.40 if the average price of butter, as described in § 922.5 (a) was more than 30 cents, or by $0.30 if such average price of butter was 30 cents or less.

(4) Add the cash balance, if any, in the producer-settlement fund.

(5) Divide by the total hundredweight of milk received from producers other than the milk represented by the amount subtracted in subparagraph (2) of this paragraph.

(6) Subtract from the figure obtained in subparagraph (5) of this paragraph not less than 4 cents nor more than 5 cents per hundredweight for the purpose of retaining a cash balance to provide against errors in reports and payments by handlers. The result shall be known as the uniform price per hundredweight for such delivery period for milk of producers which contains 4.0 percent butterfat.

(b) *Announcement of prices and transportation rates.* On or before the beginning of the following delivery period, the market administrator shall notify each handler of the uniform price for milk, and of the prices for Class III milk, and shall make public announcement of the uniform price computation. From time to time, the market administrator shall also publicly announce the amounts per hundredweight deducted by each handler from the payments made to producers and new producers pursuant to § 922.8 for the transportation of milk from the farms of producers and new producers to such handler's plant or plants, as ascertained from reports submitted pursuant to § 922.3 (a) (3).

§ 922.7 *Payment for milk*—(a) *Payment to producers and new producers.* On or before the 5th day after the end of each delivery period, each handler shall pay, with respect to all milk received during the delivery period, $1.00 per hundredweight of milk to each producer and $0.50 per hundredweight of milk to each new producer: *Provided,* That in the event the total amount of the deductions and charges authorized by any producer or new producer against payments due such producer or new producer for the delivery period next preceding is greater than the payment computed for such producer or new producer pursuant to § 922.8 (a) with respect to milk received from such producer or new producer during such preceding delivery period, the handler may deduct from the payment required by this paragraph a sum equal to the difference between such amounts.

(b) *Payment to producer-settlement fund.* On or before the 17th day after the end of each delivery period, each handler shall pay to the market administrator the amount of money which represents the value of milk billed to him for such delivery period, pursuant to § 922.5 (d), less the amount paid out to each producer and new producer in accordance with paragraph (a) of this section, and less the amount of the deductions and charges authorized by such producer or new producer which are itemized on the handler's producer pay roll: *Provided,* That, in the calculation of the total amount of such deductions and charges to be subtracted, the deductions and charges to be considered with respect to each individual producer or new producer shall not be greater than an amount which, when added to the payment made to such producer or new producer in accordance with paragraph (a) of this section (inclusive of the deductions and charges authorized by paragraph (a) of this section), will not exceed the total value of the milk received from such producer or new producer. The market administrator shall maintain a separate fund, known as the producer-settlement fund, in which he shall deposit all payments of handlers received pursuant to this paragraph.

§ 922.8 *Payments from producer-settlement fund*—(a) *Calculation of payments for each producer and new producer.* For each delivery period, the market administrator shall calculate the payment due each producer and new producer from whom milk was received during such delivery period by a handler who paid into the producer-settlement fund in accordance with § 922.7, as follows:

(1) Multiply the hundredweight of milk received from each producer by the uniform price computed in accordance with § 922.6 (a): *Provided,* That, if the milk of such producer was of an average butterfat content other than 4.0 percent, there shall be added or subtracted for each one-tenth of 1 percent variance above or below 4 percent, 4 cents per hundredweight of milk if the average price of butter as described in § 922.5 (a) was more than 30 cents, or 3 cents per hundredweight if such average price of butter was 30 cents or less.

(2) Multiply the hundredweight of milk received from each new producer by the price for Class III as provided in § 922.5 (a): *Provided,* That, if such milk was of an average butterfat content other than 4.0 percent, there shall be added or subtracted for each one-tenth of 1 percent variance above or below 4.0 percent, an amount per hundredweight equal to 1/40 of such price for Class III milk.

(3) Subtract in each case, the amount of the payment made pursuant to § 922.7 (a), and the charges and the deductions, if any, which are made pursuant to § 922.7 (b).

(b) *Payments.* On or before the 20th day after the end of each delivery period, the market administrator shall pay, subject to the provisions of § 922.10, to each cooperative association authorized to receive payments due producers or new producers who market their milk through such cooperative association, the aggregate of payments calculated pursuant to paragraph (a) of this section, for all producers and new producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments, and shall pay direct to each producer and new producer, who has not been certified as having authorized such cooperative association to receive such payments, the amount of the payments calculated pursuant to paragraph (a) of this section.

§ 922.9 *Expense of administration*—(a) *Payment by handler.* As his pro rata share of the expenses which will be necessarily incurred in the maintenance and functioning of the office of the market administrator, each handler, with respect to all milk received from producers and new producers, or produced by him, during the delivery period, shall pay the market administrator, on or before the 17th day after the end of each delivery period, that amount per hundredweight, not to exceed 2 cents, which is announced by the market administrator on or before the 13th day after the end of the delivery period.

§ 922.10 *Marketing services*—(a) *Deductions for marketing services.* The market administrator shall deduct an amount not exceeding 4 cents per hundredweight of milk (the exact amount to be determined by the market administrator), from the payments made pursuant to § 922.8 (b), with respect to those producers and new producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association, which the Secretary determines to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," for the purpose of performing for such producers and new producers the services set forth in paragraph (b) of this section.

(b) *Marketing services to be rendered.* The moneys received by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator for market information to, and for verification of weights, samples, and tests of milk received from producers and new producers for whom a cooperative association, as described in paragraph (a) of this section, is not performing the same services on a comparable basis, as determined by the market administrator, subject to the review of the Secretary.

§ 922.11 *Effective time, suspension, or termination*—(a) *Effective time.* The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to paragraph (b) of this section.

(b) *Suspension or termination of order.* The Secretary may suspend or terminate this order whenever he finds that this order obstructs or does not tend to effectuate the declared policy of the act. This order shall in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing power and duty of the market administrator.* If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall (i) continue in such capacity until removed by the Secretary, (ii) from time to time account for all receipts and disbursements and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct, and (iii) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions hereof the market administrator, or such person as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 922.12 *Liability* — (a) *Liability of handlers.* The liability of the handlers hereunder is several and not joint, and no handler shall be liable for the default of any other handler.

§ 922.13 *Counterparts and additional parties*—(a) *Counterparts of marketing agreement, as amended.* This agreement, as amended, may be executed in multiple counterparts and when one counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument as if all such signatures were obtained in one original.

(b) *Additional parties to marketing agreement, as amended.* After this agreement, as amended, first takes effect any handler may become a party to this agreement, as amended, if a counterpart thereof is executed by him and delivered to the Secretary. This agreement, as amended, shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement, as amended, shall then be effective as to such new contracting party.

B. PROPOSED PROVISIONS SUBMITTED BY MATTHEWS-FRECHTLING DAIRY COMPANY, J. H. FIELMAN DAIRY COMPANY, J. WEBER DAIRY COMPANY, AND HYDE PARK DAIRY COMPANY FOR CONSIDERATION IN CONNECTION WITH PROPOSED MARKETING AGREEMENT AND ORDER

1. Substitute as § 922.4 (d) the following:

(d) *Computation of butterfat in each class.* For each delivery period, the market administrator shall compute for each handler, the butterfat in each class, as defined in paragraph (b) of this section, as follows:

(1) Determine the total pounds of butterfat received as follows: (i) multiply the weight of the milk received from producers and new producers by its average butterfat test, (ii) multiply the weight of the milk produced by him, if any, by its average butterfat test, (iii) multiply the weight of the milk and cream received from handlers, if any, by its average butterfat test, (iv) multiply the weight of emergency milk, if any, by its average butterfat test, (v) multiply the weight of milk and cream received from any other source, if any, by its average butterfat test, and (vi) add together the resulting amounts.

(2) Determine the total pounds of butterfat in Class I milk as follows: (i) convert to half pints the quantity of milk disposed of in the form of milk or milk drinks, whether plain or flavored, and multiply by 0.5375, (ii) multiply the results by the average butterfat test of such milk, and (iii) if the quantity of butterfat so computed when added to the pounds of butterfat in Class II milk and Class III milk computed pursuant to subparagraphs (3) and (4) of this paragraph is less than the total pounds of butterfat received, computed in accordance with subparagraph (1) of this paragraph, an amount equal to the difference shall be added to the quantity of butterfat determined pursuant to (ii) of this subparagraph.

(3) Determine the total pounds of butterfat in Class II milk as follows: (i) multiply the actual weight of each of the several products of Class II milk by its average butterfat test and (ii) add together the resulting amounts.

(4) Determine the total pounds of butterfat in Class III milk as follows: (i) multiply the actual weight of each of the several products of Class III milk by its average butterfat test, (ii) subtract the total pounds of butterfat in Class I milk and Class II milk computed pursuant to subparagraphs (2) (ii) and (3) of this paragraph and the total pounds of butterfat computed pursuant to (i) of this subparagraph from the total pounds of butterfat computed pursuant to subparagraph (1) of this paragraph, which resulting quantity shall be allowed as plant shrinkage for the purposes of this paragraph (but in no event shall such plant shrinkage allowance exceed 2½ percent of the total receipts of butterfat by the handler), and (iii) add together the resulting amounts.

(5) Determine the classification of the butterfat received from producers and new producers, as follows:

(i) Subtract from the total pounds of butterfat in each class the total pounds of butterfat which were received from other handlers and used in such class.

(ii) In the case of a handler who also distributes milk of his own production, subtract from the total pounds of butterfat in each class a further amount which shall be computed as follows: divide the total pounds of butterfat in said class by the total pounds of butterfat in all classes and multiply by the total pounds of butterfat produced by him.

(iii) In the case of a handler who has received emergency milk during the delivery period, subtract from the total pounds of butterfat in each class a further amount which shall be computed as follows: divide the total pounds of butterfat in said class by the total pounds of butterfat in all classes and multiply by the total pounds of butterfat contained in emergency milk received.

(iv) Subtract from the total pounds of butterfat in each class the total pounds of butterfat, except butterfat in emergency milk, which were received from sources other than producers, new producers, or handlers and used in such class.

(e) *Computation of milk in each class.* For each delivery period, the market administrator shall compute for each handler the hundredweight of milk in each class, which was received from producers and new producers and to which the prices set forth in § 922.5 apply, as follows:

(1) Divide the total pounds of butterfat computed for each class in accordance with paragraph (d) (5) of this section by the average test of all milk received from producers and new producers by such handler.

2. Substitute as § 922.5 (b) the following:

(b) *Price of milk disposed of outside the marketing area.* The price to be paid by handlers for Class I and Class II milk disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be, as ascertained by the market administrator, such price as is being paid to farmers in the market where such milk was disposed of, for milk of equivalent use, subject to a reasonable adjustment on account of transportation with respect to Class I and Class II milk moved from the handler's plant in the marketing area to the plant outside the marketing area where such milk was loaded on wholesale and retail routes.

(c) *Computation of value of milk for each handler.* (1) For each delivery period, the market administrator shall compute the value of milk which each handler has received from producers and new producers, as follows:

(i) Multiply the hundredweight of milk in each class, computed in accordance with § 922.4 (e) (1), by the respective class price for 4.0 percent milk: *Provided,* That if the average butterfat test of milk received from producers and new producers by such handler is more than 4.0 percent, there shall be added to the respective Class I and Class II prices for 4.0 percent milk, 4 cents per hundredweight, and to the respective prices for Class III milk as provided in paragraph (a) of this section, there shall be added an amount equal to 1/40 of such respective Class III prices for each one-tenth of 1 percent of average butterfat content

above 4.0 percent; and if the average butterfat content of milk received from producers and new producers by such handler is less than 4.0 percent, there shall be subtracted from the respective Class I and Class II prices for 4.0 percent milk 4 cents per hundredweight, and from the respective prices for Class III milk as provided in paragraph (a) of this section there shall be deducted an amount equal to 1/40 of such respective Class III prices for each one-tenth of 1 percent of average butterfat content below 4.0 percent: *And provided further,* That if such handler has received milk (or cream), except emergency milk, from sources other than producers, new producers, or handlers, as referred to in § 922.4 (d) (5) (iv), and has disposed of such milk (or cream) other than as butter, there shall be added to the value of milk thus determined an amount computed as follows: multiply the hundredweight of such milk (or milk equivalent of cream) by the difference between the Class III price set forth in § 922.5 (a) (4) and the price applicable to the class in which it was disposed.

(ii) Add together the resulting amounts.

(iii) If, in the verification of reports submitted by the handler, the market administrator discovers errors in such reports which result in payments due the producer-settlement fund or the handler for any previous delivery periods, there shall be added or subtracted, as the case may be, the amount necessary to correct any such errors.

C. PROPOSED PROVISIONS SUBMITTED BY J. H. FIELMAN DAIRY COMPANY, J. WEBER DAIRY COMPANY, AND HYDE PARK DAIRY COMPANY FOR CONSIDERATION IN CONNECTION WITH PROPOSED MARKETING AGREEMENT AND ORDER.

1. Substitute as § 922.5 (a) the following:

§ 922.5 (a) *Class prices.* Each handler shall pay at the time and in the manner set forth in § 922.7 not less than the following prices for milk received at such handler's plant on the basis of 4.0 percent butterfat content, as follows:

(1) Class I milk $3.20 per hundredweight for all delivery periods prior to September 1, 1942, and $3.50 per hundredweight for all delivery periods subsequent to August 31, 1942: *Provided,* That with respect to Class I milk disposed of by a handler through a recognized relief agency or under a program approved by the Secretary for the sale or disposition of milk to low income consumers, including persons on relief, the price shall be $2.55 for all delivery periods prior to September 1, 1942, and $2.85 per hundredweight for all delivery periods subsequent to August 30, 1942.

(2) Class II milk: $2.35 per hundredweight for all delivery periods prior to September 1, 1942, and $2.55 per hundredweight for all delivery periods subsequent to August 31, 1942.

(3) Class III milk: Except as set forth in subparagraph (4) of this paragraph, the price per hundredweight which shall be calculated by the market administrator as follows: Multiply by 4 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received and add 35 percent thereof for all delivery periods prior to September 1, 1942, and add 40 percent thereof for all delivery periods subsequent to August 31, 1942.

(4) In the case of Class III milk disposed of as butter the price per hundredweight shall be the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received plus 2 cents, multiplied by 4. In the event that the total receipts of milk, excepting emergency milk, by all handlers from producers and new producers during the delivery period, as ascertained by the market administrator from reports submitted by handlers pursuant to § 922.3 (a), are less than 125 percent of the total quantity of milk disposed of as Class I and Class II milk by such handlers, computed pursuant to § 922.4, the price set forth above shall apply to a quantity of milk disposed of as butter but not to exceed 10 percent of such Class I and Class II milk.

2. Add as § 922.14 the following:

§ 922.14 *Market advisory committee*—(a) *Representation, selection, approval, and removal.* Subsequent to the effective date of this order, representatives of producers and handlers may certify to the Secretary the selection of four individuals by each group for membership on the market advisory committee. Upon approval of the Secretary, the eight individuals so selected shall constitute the market advisory committee. Each member of the market advisory committee shall serve for a term of one year unless sooner removed by the Secretary. After the market advisory committee has been constituted, vacancies in the membership thereof shall be filled in the same manner as the original selections were made.

(b) *Powers.* The market advisory committee shall have the power to recommend to the Secretary amendments to this order originating within itself or submitted to it by interested parties after a study of the facts available to the market advisory committee.

The Secretary may designate this committee to arbitrate any disputes which might arise over the interpretation of this order or in reference to prices fixed in this order. Any such arbitration, however, shall not become effective until approved by the Secretary, and the Secretary shall not approve same unless he finds that said award of the arbitration committee tends to effectuate policies of this act.

D. PROPOSED PROVISIONS SUBMITTED BY THE CO-OPERATIVE PURE MILK ASSOCIATION FOR CONSIDERATION IN CONNECTION WITH PROPOSED MARKETING AGREEMENT AND ORDER.

1. Substitute as § 922.6 (a) the following:

§ 922.6 (a) *Computation of uniform price.* The market administrator shall compute the uniform price per hundredweight of milk received by each handler during each delivery period as follows:

(1) Subtract from the value of milk as computed in § 922.5 (c) for such handler the amounts calculated pursuant to § 922.8 (a) (2).

(2) Subtract, if the average butterfat test of all milk is greater than 4.0 percent, or add, if the average butterfat test of such milk is less than 4.0 percent, an amount computed as follows:

Multiply the hundredweight of milk by the variance of such average butterfat test from 4.0 percent, and multiply the resulting amount by $0.40 if the average price of butter, as described in § 922.5 (a) was more than 30 cents, or by $0.30 if such average price of butter was 30 cents or less.

(3) Add the cash balance, if any, in the producer-settlement fund.

(4) Divide by the total hundredweight of milk received from producers by such handler other than the milk represented by the amount subtracted in subparagraph (1) of this paragraph.

(5) Subtract from the figure obtained in subparagraph (4) of this paragraph not less than 4 cents nor more than 5 cents per hundredweight for the purpose of retaining a cash balance to provide against errors in reports and payments by each handler. The result shall be known as such handlers' uniform price per hundredweight for such delivery period for milk of producers which contains 4.0 percent butterfat.

Additional copies of this notice of hearing may be procured from the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, in Room 0312, South Building, Washington, D. C., or may be there inspected.

[SEAL] THOMAS J. FLAVIN,
Assistant to the Secretary of Agriculture.[1]

APRIL 16, 1942.

[F. R. Doc. 42-3391; Filed, April 16, 1942; 11:01 a. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 5872]

APPLICATION OF GENERAL BROADCASTING, INC. (NEW)

NOTICE OF HEARING

Application of General Broadcasting, Inc. (New), dated January 15, 1940, for construction permit; class of service, broadcast; class of station, broadcast; location, Miami, Florida; operating assignment specified: Frequency, 1,140 kc.; power, 5 kw. (DA—night and day); hours of operation, unlimited.

You are hereby notified that the Commission has examined the above described application and has designated

[1] Acting pursuant to authority delegated by the Secretary of Agriculture under the Act of April 4, 1940 (54 Stat. 81; 7 F.R. 2656)

the matter for hearing for the following reasons:

1. To determine the qualifications of the applicant to construct and operate the proposed station.
2. To determine the character of the proposed program service.
3. To determine whether the simultaneous operation of the proposed station and Station WRVA would involve objectionable interference within the 500 uv/m (50% of the time) skywave service contour of the latter station, as well as the areas and populations affected thereby and what other broadcast service is available to these areas and populations.
4. To determine whether the simultaneous operation of the proposed station and Station XENT, Monterrey, Nuevo Leon, Mexico, would involve objectionable interference within the 500 uv/m (50% of the time) skywave service contour of Station XENT (Table I, Appendix II, NARBA).
5. To determine whether the granting of this application would be consistent with the Standards of Good Engineering Practice, particularly in view of the expected nighttime interference limitation to the service of the proposed station.
6. To determine the areas and populations which would receive primary service from the operation of the proposed station and what other broadcast service is already available to these areas and populations.
7. To determine whether the proposed construction involves the use of any critical materials.
8. To determine whether the granting of the application would be consistent with the policy announced by the Commission with respect to authorizations involving the use of critical materials (see Commission's Memorandum Opinion dated February 23, 1942, Mimeograph No. 58106).
9. To determine whether the granting of this application would tend toward a fair, efficient, and equitable distribution of radio service as contemplated by section 307 (b) of the Communications Act of 1934, as amended.
10. To determine whether in view of the facts adduced under the foregoing issues and the issues relating to the application of the Florida National Building Corporation, Docket 6285, public interest, convenience, and necessity would be served by the granting of this application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

General Broadcasting, Inc., c/o T. F. O'Neil, 3630 Flamingo Drive, Miami Beach, Florida.

Dated at Washington, D. C., April 14, 1942.

By the Commission.

[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 42-3378; Filed, April 16, 1942; 10:45 a. m.]

[Docket No. 6285]

APPLICATION OF FLORIDA NATIONAL BUILDING CORPORATION (NEW)

NOTICE OF HEARING

Application of Florida National Building Corporation (New), dated October 28, 1941, for construction permit; class of service, broadcast; class of station, broadcast; location, Miami, Florida; operating assignment specified: Frequency, 1,170 kc.; power, 5 kw. (DA—night and day); hours of operation, unlimited.

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine the qualifications of the applicant to construct and operate the proposed station.
2. To determine the character of the proposed program service.
3. To determine whether the proposed construction involves the use of any materials of a type determined by the War Production Board to be critical.
4. To determine what new areas and populations would receive primary service as a result of the proposed operation and what broadcast service is already available to such areas and populations.
5. To determine whether the granting of this application would be consistent with the policy announced by the Commission with respect to authorizations involving the use of critical materials (see Memorandum Opinion dated February 23, 1942, Mimeograph 58106).
6. To determine whether simultaneous operation of the proposed station and Station WWVA would involve objectionable interference within the 500 uv/m, 50% of the time, skywave service contour of Station WWVA as well as the areas and populations affected thereby and what other broadcast service is available to these areas and populations.
7. To determine whether the granting of this application would tend toward a fair, efficient, and equitable distribution of radio service as contemplated by section 307 (b) of the Communications Act of 1934 as amended.
8. To determine whether the granting of this application would be consistent with the Standards of Good Engineering Practice, particularly in view of the expected nighttime interference limitation to the service of the proposed station.
9. To determine the extent of any interference which would result from the simultaneous operation of the proposed station, and Station WAPI on 1,170 kc.
10. To determine whether in view of the facts adduced under the foregoing issues, and the issues relating to the application of the General Broadcasting, Inc. (Docket 5872), public service, convenience and necessity would be served through the granting of this application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

Florida National Building Corporation, Attention: L. A. Usina, c/o Florida National Bank and Trust Company, Miami, Florida.

Dated at Washington, D. C., April 14, 1942.

By the Commission.

[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 42-3379; Filed, April 16, 1942; 10:45 a. m.]

FOREIGN-TRADE ZONE BOARD.

[Order No. 8]

IN THE MATTER OF THE APPLICATION OF THE CITY OF NEW YORK FOR AUTHORITY TO CARRY ON FOREIGN-TRADE ZONE OPERATIONS AT CERTAIN PIERS LOCATED ON THE NORTH RIVER AND ADJACENT UPLANDS IN THE BOROUGH OF MANHATTAN, DURING THE PRESENT EMERGENCY

Pursuant to the authority contained in the Act of June 18, 1934 (48 Stat. 998; 19 U.S.C. 81-a to 81-u), the Foreign-Trade Zones Board has approved the application of the City of New York, dated March 26, 1942, that Piers No. 72, 73, 74, 75 and 84, North River, Manhattan, and adjacent slips and uplands be used as temporary sites where foreign-trade zone operations may be carried on during the present emergency, and has adopted the following order which is promulgated for the information and guidance of all concerned:

The War Department having decided that a military necessity existed for the immediate occupancy of Piers 12, 13, 14, 15 and 16, and adjacent slips and upland comprising a part of Foreign-Trade Zone No. 1, at Stapleton, Staten Island,

New York, the Foreign-Trade Zones Board by Order No. 7,[1] effective February 23, 1942, directed the City of New York to maintain an office and carry on operations within the area excepted by the War Department. The Board's Order further directed the City of New York to obtain suitable sites within the limits of of the Port of New York wherein Foreign-Trade Zone operations are to be carried on during the period of the present emergency, and further provided that upon approval of such sites by the Board any area so approved would be deemed to be within Foreign-Trade Zone No. 1.

That on March 26, 1942, the City of New York, through its Mayor, F. H. LaGuardia, made application to the Board that Piers 72, 73, 74, 75 and 84, North River, Manhattan, and uplands immediately adjacent thereto, be designated as temporary sites where Zone operations may be carried on during the present emergency.

Therefore be it resolved that the Board herewith approves the application of the City of New York and designates Piers 72, 73, 74, 75 and 84, North River, Manhattan and uplands immediately adjacent thereto as suitable sites where temporary Zone operations shall be carried on during the present emergency and during this period of temporary occupancy said areas will be deemed within Foreign-Trade Zone No. 1.

The City of New York is ordered to segregate these areas and the structures thereon to comply with the requirements of the Collector of Customs of the Port of New York.

This Order is effective March 23, 1942.

[SEAL] JESSE H. JONES,
Chairman.

[F. R. Doc. 42-3398; Filed, April 16, 1942; 11:46 a. m.]

INTERSTATE COMMERCE COMMISSION.

DESIGNATION OF ADDITIONAL MEMBER OF DIVISION 3

APRIL 15, 1942.

The Interstate Commerce Commission announces that Commissioner Rogers has been designated an additional member of Division 3 of the Commission for consideration of matters arising under section 204 (e) of the Interstate Commerce Act. Division 3 now consists of Commissioners Miller, Patterson and Johnson, with Commissioner Rogers serving as an additional member for the consideration of matters arising under Section 204 (e) relating to emergency powers over equipment, service, and facilities of motor carriers.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 42-3392; Filed, April 16, 1942; 11:18 a. m.]

[1] 7 F.R. 2074.

SECURITIES AND EXCHANGE COMMISSION.

[File Nos. 59-14, 54-19]

IN THE MATTERS OF INTERNATIONAL HYDRO-ELECTRIC SYSTEM, NEW ENGLAND POWER ASSOCIATION, MASSACHUSETTS POWER AND LIGHT ASSOCIATES, NORTH BOSTON LIGHTING PROPERTIES, THE RHODE ISLAND PUBLIC SERVICE COMPANY, MASSACHUSETTS UTILITIES ASSOCIATES COMMON VOTING TRUST, MASSACHUSETTS UTILITIES ASSOCIATES, RESPONDENTS; AND NORTH BOSTON LIGHTING PROPERTIES, AND MASSACHUSETTS POWER AND LIGHT ASSOCIATES

ORDER RECONVENING HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Philadelphia, Pa., on the 14th day of April 1942.

The Commission having heretofore, among other things, instituted proceedings pursuant to section 11 (b) (2) of the Public Utility Holding Company Act of 1935 with respect to International Hydro-Electric System, New England Power Association, Massachusetts Power and Light Associates, North Boston Lighting Properties, The Rhode Island Public Service Company, Massachusetts Utilities Associates Common Voting Trust, and Massachusetts Utilities Associates, Respondents; and the Commission having on July 1, 1941, issued its order directing that certain matters relating to certain of said Respondents to be taken up and considered prior to the consideration of other matters herein; and

It appearing to the Commission that it is presently appropriate and conducive to an orderly disposition of these proceedings that certain matters relating to International Hydro-Electric System now be taken up and considered:

It is ordered, That the consolidated hearings herein be reconvened on the 4th day of May 1942, at 10 o'clock in the forenoon on that day in Room 318 of the Securities and Exchange Commission Building, 18th and Locust Streets, Philadelphia, Pennsylvania, for the purpose of consideration and determination of the following matters:

1. Whether the continued existence of International Hydro-Electric System unduly or unnecessarily complicates the structure of the International Hydro-Electric System holding-company system;

2. Whether the continued existence of International Hydro-Electric System unfairly or inequitably distributes voting power among the security holders of the International Hydro-Electric System holding-company system;

3. Whether the corporate structure of International Hydro-Electric System unduly or unnecessarily complicates the structure of the International Hydro-Electric System holding-company system;

4. Whether the corporate structure of International Hydro-Electric System unfairly or inequitably distributes voting power among security holders of the International Hydro-Electric System holding-company system;

5. In view of the foregoing matters what, if any, action is necessary and should be required to be taken by International Hydro-Electric System to effect compliance with the provisions of section 11 (b) (2) of the Public Utility Holding Company Act of 1935.

It is further ordered, That the foregoing specification of matters to be considered at the reconvened hearing shall be without prejudice to the Commission's closing the record with respect to any of such matters prior to closing the record with respect to the remaining matters if, at any time, such action may appear conducive to orderly and economic disposition of such specified matters.

Notice of such hearing is hereby given to Respondents, intervenors and to any other persons whose participation in the proceedings herein may be in the public interest or for the protection of investors and consumers. At the reconvened hearing an opportunity will be afforded to submit all evidence, present contentions, or make arguments relevant to a final determination of the matters specified herein. Any person proposing to intervene in these proceedings and not having already done so shall file with the Secretary of the Commission on or before the 30th day of April, 1942, his request or application therefor so provided by Rule XVII of the Rules of Practice of the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 42-3363; Filed, April 15, 1942; 3:15 p. m.]

[File No. 59-10]

IN THE MATTER OF THE NORTH AMERICAN COMPANY AND ITS SUBSIDIARY COMPANIES, RESPONDENTS

ORDER REQUIRING DIVESTITURE BY HOLDING COMPANIES AND SUBSIDIARIES IN HOLDING COMPANY SYSTEM OF COMPANIES AND PROPERTIES OWNED OR OPERATED THEREBY

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 14th day of April A. D. 1942.

The Commission having on March 8, 1940, by notice and order for hearing, supplemented by a notice and order dated August 12, 1940, adding certain companies as respondents, instituted proceedings under section 11 (b) (1) of the Public Utility Holding Company Act of 1935 against The North American Company and its subsidiaries to determine their status under said section, and The North American Company and its subsidiaries having severally answered such notice and order; and

Hearings having been held after due notice, requests for findings of fact on behalf of such companies and briefs in support thereof having been filed, oral argument having been heard; and

The Commission being advised in the premises, and having this day issued its Findings and Opinion with respect to certain action which the Commission finds necessary to limit the operations of the holding company systems of The North American Company and its subsidiaries, including each subsidiary thereof which is a registered holding company and its subsidiaries, to a single integrated public utility system and additional systems and other businesses in accordance with the requirements of section 11 (b) (1) of the Public Utility Holding Company Act of 1935;

It is ordered, Pursuant to section 11 (b) (1):

1. That The North American Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Union Electric Land and Development Company
East St. Louis & Suburban Railway Company
East St. Louis Railway Company
Wisconsin Electric Power Company
The Milwaukee Electric Railway & Transport Company
Motor Transport Company
Badger Auto Service Company
Wisconsin Gas & Electric Company
Wisconsin Michigan Power Company
Milwaukee Light, Heat & Traction Company
Hevi-Duty Electric Company
The Cleveland Electric Illuminating Company
The Power & Light Building Company
The Ceico Company
North American Light & Power Company
The Kansas Power and Light Company
Missouri Power & Light Company
The Blue River Power Company
The McPherson Oil & Gas Development Company
Power & Light Securities Company
North American Oil and Gas Company
Northern Natural Gas Company
Argus Natural Gas Company, Inc.
Peoples Natural Gas Company
Illinois Traction Company
Kewanee Public Service Company
Cahokia Manufacturers Gas Company
Western Illinois Ice Company
Illinois Iowa Power Company
Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
Cairo City Gas Company
Champaign and Urbana Gas Light and Coke Company
Danville Gas Light Company
Decatur Electric Company
The Jacksonville Gas Light & Coke Company
Jacksonville Railway and Light Company
St. Louis Electric Terminal Railway Company
Venice Gas Company
Washington Railway and Electric Company
Potomac Electric Power Company
Great Falls Power Company
The Washington and Rockville Railway Company of Montgomery County
Braddock Light & Power Company, Incorporated
Capital Transit Company
Montgomery Bus Lines, Incorporated
The Glen Echo Park Company
West Kentucky Coal Company (New Jersey)
West Kentucky Coal Company (Delaware)
Peoples Coal Company
St. Bernard Coal Company
North American Utility Securities Corporation
Pacific Gas and Electric Company and its subsidiaries
The Detroit Edison Company and its subsidiaries;

2. That Union Electric Company of Missouri, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Union Electric Land and Development Company
East St. Louis & Suburban Railway Company
East St. Louis Railway Company;

3. That Washington Railway and Electric Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Great Falls Power Company
Capital Transit Company
Montgomery Bus Lines, Incorporated
The Glen Echo Park Company;

4. That Washington and Rockville Railway Company of Montgomery County, a registered public utility holding company, shall sever its relationship with the company named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by: Great Falls Power Company;

5. That Northern Natural Gas Company, a registered public utility holding company, shall sever its relationship with the company named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by: Argus Natural Gas Company;

6. That Illinois Traction Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and its indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Western Illinois Ice Company
Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
St. Louis Electric Terminal Railway Company;

and that Illinois Traction Company shall cease to own facilities devoted to, or engage in or control, directly or indirectly, the operation of any water, ice, oil drilling and transportation business now conducted by Illinois Iowa Power Company;

7. That Illinois Iowa Power Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing, or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Des Moines Electric Light Company
Iowa Power and Light Company
Illinois Terminal Railroad Company
Central Terminal Company
St. Louis Electric Terminal Railway Company;

and that Illinois Iowa Power Company shall cease to own or operate any property or facilities now owned or operated by it for the purpose of conducting, directly or indirectly, any water, ice, oil drilling and transportation business now conducted by it, and to cease engaging, directly or indirectly, in any water, ice, oil drilling and transportation business now engaged in by it; and

It is further ordered, That the respondents, in accordance with section 11 (c) of the said Act, shall comply with this order within one year from the date of its entry (without prejudice to their right to apply for additional time to comply with such order, as provided in such section).

Certain of the respondents in this proceeding which are registered public utility holding companies controlling or

operating more than one single integrated public utility system, although heretofore afforded opportunity to indicate their choice of the single integrated system they desire to retain as their principal system, having failed to avail themselves of such opportunity, and the Commission desiring, nevertheless, that further opportunity be afforded such respondents to indicate their views with respect to the choice of a principal system;

It is further ordered, That notwithstanding the provisions of Rule XII (d) of the Commission's Rules of Practice, The North American Company, Northern Natural Gas Company, Illinois Traction Company, and Illinois Iowa Power Company may, within 15 days of the date hereof, petition for leave to present further argument and proffer additional evidence as follows:

1. The North American Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system, other than the integrated electric utility system of the Union group as described in our Findings and Opinion herein this day issued, shall serve as its principal system;

2. Northern Natural Gas Company may petition for opportunity to present further argument or additional evidence on the question whether the single integrated gas utility system operated by Argus Natural Gas Company, rather than that operated by Peoples Natural Gas Company, shall serve as its principal system.

3. Illinois Traction Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system controlled or operated by any of its subsidiary companies, other than the major integrated electric utility system operated by Illinois Iowa Power Company, referred to in our Findings and Opinion herein this day issued, shall serve as its principal system.

4. Illinois Iowa Power Company may petition for opportunity to present further argument or additional evidence on the question whether any single integrated public utility system operated by it or any of its subsidiaries other than the major integrated electric utility system referred to in our Findings and Opinion herein this day issued, shall serve as its principal system.

Provided, however, That the Commission reserves the right to grant, deny or dispose of any such petition according to the merits of the grounds urged in support thereof.

Issue having arisen in this proceeding as to the permissibility of retention of (a) the gas businesses conducted by Union Electric Company of Illinois, Iowa Union Electric Company, and St. Louis County Gas Company, in addition to the integrated electric utility system operated by Union Electric Company of Missouri and its subsidiaries; (b) the gas businesses conducted by Illinois Iowa Power Company, Kewanee Public Service Company, and Cahokia Manufacturers Gas Company, in addition to the electric operations of Illinois Iowa Power Company and Kewanee Public Service Company; (c) the gas operations of Des Moines Electric Light Company and Iowa Power and Light Company, in addition to the electric operations of said companies; and (d) the securities of Cairo City Gas Company, Champaign and Urbana Gas Light and Coke Company, Danville Gas Light Company, Decatur Electric Company, The Jacksonville Gas Light & Coke Company, Jacksonville Railway and Light Company, and Venice Gas Company in the holding company systems of Illinois Traction Company and Illinois Iowa Power Company; and

The Commission deeming it necessary and appropriate that the record be reopened and that additional opportunity be afforded for the presentation of further relevant evidence bearing on such questions;

It is ordered, That, at such hour and place, and before such trial examiner and in such manner as the Commission shall by further notice and order designate, additional opportunity shall be afforded for the presentation of further relevant evidence bearing upon the question whether the gas businesses and securities referred to may be retained under clauses (A), (B), and (C) of section 11 (b) (1) of the Act as systems additional to the integrated electric utility systems of Union Electric Company of Missouri and its subsidiaries; Illinois Iowa Power Company and Kewanee Public Service Company; and Des Moines Electric Light Company and Iowa Power and Light Company, respectively.

Counsel for The North American Company having moved for a dismissal of this proceeding as to certain of its subsidiaries, named in our Order of March 8, 1940, commencing this proceeding, on the ground that they have been dissolved, or that The North American Company no longer has any interest in them, no objection having been made to this motion, and the Commission being of the opinion that the motion should be granted;

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to the following named respondents:

Washington and Glen Echo Railroad Company
St. Louis and East St. Louis Electric Railway Company
Wired Radio, Inc.
Wired Rediffusion Developments, Ltd.
St. Charles Electric Light and Power Company
Lakeside Light and Power Company
Wisconsin General Railway Company
Bloomington and Normal Railway, Electric and Heating Company
Decatur Light, Heat and Power Company
Elkhart Electric Light Company
Chicago and Electric Valley Railroad Company.

It is provided, With respect to our Findings, Opinion and Order herein, in their entirety, and with respect to the entry, publication, and service thereof, that they shall be without prejudice to the right of the Commission to enter such other and further appropriate orders from time to time as the Commission may deem necessary to secure compliance by the respondents with the provisions of the Act and the pertinent rules and regulations thereunder in carrying out the provisions of this Order; and

It is further provided, That jurisdiction is reserved to the Commission, notwithstanding this Order, or its entry, publication, and service, to conduct such investigations, hearings, or other proceedings involving any or all of the respondents herein and to make such orders as it shall deem necessary or appropriate under section 11 (b) (2) or any other provision of the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 42-3369; Filed, April 16, 1942; 10:14 a. m.]

[File No. 70-528]

IN THE MATTER OF INTERNATIONAL UTILITIES CORPORATION

NOTICE REGARDING FILING

At a regular session of the Securities and Exchange Commission held at its office in the City of Philadelphia, Pa., on the 15th day of April, A. D. 1942.

Notice is hereby given that a declaration or application (or both) has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by the above named party; and

Notice is further given that any interested person may, not later than April 23, 1942, at 5:30 P. M., E. W. T., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request and the nature of his interest, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter such declaration or application, as filed or as amended, may become effective or may be granted, as provided in Rule U-23 of the Rules and Regulations promulgated pursuant to said Act or the Commission may exempt such transaction as provided in Rules U-20 (a) and U-100 thereof. Any such request should be addressed: Secretary, Securities and Exchange Commission, Philadelphia, Pennsylvania.

All interested persons are referred to said declaration or application, which is on file in the office of said Commission, for a statement of the transactions therein proposed, which are summarized below:

International Utilities Corporation, a registered holding company, proposes to pay out of capital or unearned surplus a regular quarterly dividend on its $3.50 Prior Preferred Stock at the rate of 87½¢ per share on the 98,967 shares of such stock presently outstanding. The aggregate amount of this dividend will be $86,596.13.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 42-3370; Filed, April 16, 1942; 10:14 a. m.]